

5-4-89

Vol. 54

No. 85

federal register

Thursday
May 4, 1989

United States
Government
Printing Office

SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, \$300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

SECRET

100-100000-100000
100-100000-100000
100-100000-100000
100-100000-100000

SECRET
100-100000-100000
100-100000-100000
100-100000-100000

100-100000-100000
100-100000-100000
100-100000-100000
100-100000-100000

Thursday
May 4, 1989

Federal Register

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, and St.
Louis, MO, see announcement on the inside cover of this
issue.



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for \$340 per year in paper form; \$195 per year in microfiche form; or \$37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is \$1.50 for each issue, or \$1.50 for each group of pages as actually bound, or \$175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

| | |
|------------------------------------|--------------|
| Paper or fiche | 202-783-3238 |
| Magnetic tapes | 275-3328 |
| Problems with public subscriptions | 275-3054 |

Single copies/back copies:

| | |
|------------------------------------|----------|
| Paper or fiche | 783-3238 |
| Magnetic tapes | 275-3328 |
| Problems with public single copies | 275-3050 |

FEDERAL AGENCIES

Subscriptions:

| | |
|--|----------|
| Paper or fiche | 523-5240 |
| Magnetic tapes | 275-3328 |
| Problems with Federal agency subscriptions | 523-5240 |

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** May 23; at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240

ST. LOUIS, MO

- WHEN:** May 23; at 9:00 a.m.
- WHERE:** Room 1612,
Federal Building,
1520 Market Street,
St. Louis, MO
- RESERVATIONS:** Call the Federal Information Center,
St. Louis: 314-425-4106
Missouri (outside St. Louis): 1-800-392-7711
Kansas: 1-800-432-2934

Contents

Federal Register

Vol. 54, No. 85

Thursday, May 4, 1989

Agriculture Department

See also Forest Service

NOTICES

Agency information collection activities under OMB review, 19207

Antitrust Division

NOTICES

National cooperative research notifications:

Semiconductor Research Corp., 19256

Software Productivity Consortium, 19256

X/Open, Ltd., 19255

Army Department

See Engineers Corps

Bonneville Power Administration

NOTICES

Wholesale power rates:

1987 rates; proposed extension, 19218

Coast Guard

RULES

Districts, marine inspection zones, and captain of port zones:

Zone changes, etc., 19166

Ports and waterways safety:

Hampton Roads, VA—

Regulated navigation area, 19168

Regattas and marine parades:

Racine on the Lake, Lakefront Airshow, 19167

Seattle Yacht Club's Opening Day, 19166

Commerce Department

See Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office

Conservation and Renewable Energy Office

NOTICES

Consumer product test procedures; waiver petitions:

Trane Co.; correction, 19226

Defense Department

See also Engineers Corps

PROPOSED RULES

Federal Acquisition Regulation (FAR):

Price reasonableness threshold, 19339

Education Department

RULES

Elementary and secondary education:

Indian education formula grant program; local educational agency's authority to count children to generate funds, 19334

Employment and Training Administration

PROPOSED RULES

Job Training Partnership Act; Job Corps program under Title IV-B, implementation; and Comprehensive Employment and Training Act, CFR Parts removed, 19316

Energy Department

See also Bonneville Power Administration; Conservation and Renewable Energy Office; Federal Energy Regulatory Commission

NOTICES

Agency information collection activities under OMB review, 19214

Grants and cooperative agreements; availability, etc.:

Small Business Competitiveness Demonstration Program, 19217

Engineers Corps

NOTICES

Environmental statements; availability, etc.:

Delaware River, PA, 19214

Patoka Lake, IN, 19213

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States:

Kentucky, 19169

Massachusetts, 19173

Pennsylvania, 19172

Hazardous waste program authorizations:

New York, 19184

NOTICES

Meetings:

Science Advisory Board, 19232

Toxic and hazardous substances control:

Premanufacture exemption applications, 19236

Premanufacture notices receipts, 19232

Water pollution criteria:

Ambient water quality criteria documents; availability, 19227

Executive Office of the President

See Presidential Documents; Trade Representative, Office of United States

Export Administration Bureau

NOTICES

Export privileges, actions affecting:

Inbar, Rene, et al., 19210

Family Support Administration

PROPOSED RULES

Public assistance programs:

Aid to families with dependent children (AFDC) and adult assistance programs—

Indian trust funds and Alaska Native Claims

Settlement Act distributions; exclusion, 19197

Farm Credit Administration

NOTICES

Receiver appointments:

Coleman Production Credit Association, 19236

Federal Aviation Administration

RULES

Control zones, 19157, 19158

(2 documents)

Jet routes, 19160

Transition areas, 19158, 19159
(3 documents)

PROPOSED RULES

Transition areas, 19195, 19196
(2 documents)

NOTICES

Airport noise compatibility program:
Nantucket Memorial Airport, MA, 19276
Noise exposure map—

Spokane International Airport, WA, 19277
Exemption petitions; summary and disposition, 19278
Meetings:

Research, Engineering, and Development Advisory
Committee, 19280

National aviation safety priorities, 19279

Federal Communications Commission

NOTICES

Public safety radio communications plans:
Southern California area, 19237

Federal Energy Regulatory Commission

RULES

Natural Gas Policy Act:
Ceiling prices—
Maximum lawful prices and inflation adjustment
factors, 19161

NOTICES

Electric rate, small power production, and interlocking
directorates filings, etc.:

Proctor & Gamble Paper Products Co. et al., 19221

Applications, hearings, determinations, etc.:

Columbia Gas Transmission Corp., 19223

Fina Oil & Chemical Co. et al., 19224

Gasdel Pipeline System, Inc., 19224

Granite State Gas Transmission, Inc., 19224

North Penn Gas Co., 19225

Panhandle Eastern Pipe Line Co., 19225

Southern Natural Gas Co., 19225

Transcontinental Gas Pipe Line Corp. et al., 19225

Federal Highway Administration

PROPOSED RULES

Engineering and traffic operations:
Truck size and weight—
Reasonable access, 19196

NOTICES

Environmental statements; availability, etc.:
St. Louis County, MO, 19280

Federal Home Loan Bank Board

RULES

Federal Savings and Loan Insurance Corporation, etc.:
Federal Home Loan Banks as secured creditors, 19155

Federal Reserve System

NOTICES

Applications, hearings, determinations, etc.:

First American Corp., 19237

Merchant House, 19237

Tate, James M., 19238

Fish and Wildlife Service

NOTICES

Coastal Barrier Resources System; five year review and
modifications, 19248

Endangered and threatened species permit applications,
19248

Food and Drug Administration

RULES

Animal drugs, feeds, and related products:
Sulfamethazine boluses; correction, 19283

Food additives:

Polymers—

Ethylene terephthalate-isophthalate copolymers;
correction, 19283

NOTICES

Meetings:

Consumer information exchange; correction, 19283

Forest Service

NOTICES

Environmental statements; availability, etc.:

Beaverhead National Forest, MT, 19207

Flathead National Forest, MT, 19208

Sequoia National Forest, CA, 19209, 19210

(2 documents)

General Services Administration

PROPOSED RULES

Federal Acquisition Regulation (FAR):
Price reasonableness threshold, 19339

Health and Human Services Department

See Family Support Administration; Food and Drug
Administration; Public Health Service; Social Security
Administration

Housing and Urban Development Department

NOTICES

Agency information collection activities under OMB review,
19239, 19241, 19242
(3 documents)

Grants and cooperative agreements; availability, etc.:

Facilities to assist homeless—

Excess and surplus Federal property, 19243

Privacy Act:

Systems of records, 19240

Interior Department

See Fish and Wildlife Service; Land Management Bureau;
National Park Service; Surface Mining Reclamation and
Enforcement Office

Internal Revenue Service

RULES

Income taxes:

Consolidated return regulations; consolidated group
restructuring adjustments; correction, 19165, 19283
(2 documents)

International Trade Administration

NOTICES

Antidumping:

Small business telephone systems and subassemblies
from—

Japan, 19211

International Trade Commission

NOTICES

Import investigations:

12-volt motorcycle batteries from Taiwan, 19253

Chemiluminescent compositions and components, 19250

Concealed cabinet hinges and mounting plates, 19251

Generic cephalixin capsules from Canada, 19251

Track lighting system components, including plugboxes, 19252

Interstate Commerce Commission

NOTICES

Rail carriers:

Cost of capital; railroad industry's annual rate proceeding, 19255

Railroad operation, acquisition, construction, etc.:

Chicago & North Western Transportation Co., 19254

Justice Department

See also Antitrust Division; Juvenile Justice and Delinquency Prevention Office

NOTICES

Pollution control; consent judgments:

En-Pro Contractors, Inc., 19255

Juvenile Justice and Delinquency Prevention Office

NOTICES

Grants and cooperative agreements; availability, etc.:

Juvenile detention and correctional facilities, conditions; evaluation study, 19257

Labor Department

See Employment and Training Administration

Land Management Bureau

NOTICES

Classification of public lands:

Wyoming, 19244

Closure of public lands:

California, 19243

Oregon, 19243

Environmental statements; availability, etc.:

Electronic combat test capability facilities, UT, 19244

San Bernardino County, CA, 19244

Opening of public lands:

Utah, 19245

Public lands and interest in lands:

Utah, 19245

Realty actions; sales, leases, etc.:

Oregon, 19246

Reports; availability etc.:

Unleased Federal coal in Campbell County, WV;

lithologic logs and sound velocity measurements, 19246

Resource management plans, etc.:

Klamath Falls Resource Area, OR, 19246

Survey plat filings:

Wisconsin, 19247

Withdrawal and reservation of lands:

Arizona, 19247

Maritime Administration

NOTICES

Government-owned vessel (SS LANE VICTORY) transfer to Merchant Marine Veterans of World War II, 19280

National Aeronautics and Space Administration

PROPOSED RULES

Federal Acquisition Regulation (FAR):

Price reasonableness threshold, 19339

National Archives and Records Administration

NOTICES

Agency records schedules; availability, 19261

National Mediation Board

NOTICES

Meetings; Sunshine Act, 19282

National Oceanic and Atmospheric Administration

RULES

Fishery conservation and management:

Ocean salmon of the coasts of Washington, Oregon, and California, 19185

PROPOSED RULES

Fishery conservation and management:

Bering Sea and Aleutian Island groundfish, 19199

NOTICES

Coastal zone management programs and estuarine sanctuaries:

Consistency appeals—

Amoco Production Co., 19212

Asociacion de los Indios, 19212

White, Claude A., 19213

National Park Service

NOTICES

Environmental statements; availability, etc.:

Denali National Park and Preserve et al., AK, 19249

Management and land protection plans; availability, etc.:

Petrified Forest National Park, AZ, 19249

National Science Foundation

NOTICES

Meetings:

Atmospheric Sciences Advisory Committee, 19262

Electrical, Communications, and Systems Engineering

Advisory Committee, 19263

Information, Robotics, and Intelligent Systems Advisory Committee, 19263

Ocean Sciences Advisory Committee, 19263

Nuclear Regulatory Commission

NOTICES

Environmental statements; availability, etc.:

Pacific Gas & Electric Co., 19263, 19264

(2 documents)

Power Authority of State of New York, 19265

Applications, hearings, determinations, etc.:

Duke Power Co., 19266, 19268

(2 documents)

Portland General Electric Co., 19270

Southern California Edison Co. et al., 19270-19272

(3 documents)

Office of United States Trade Representative

See Trade Representative, Office of United States

Pacific Northwest Electric Power and Conservation Planning Council

NOTICES

Power plan amendments:

Northwest conservation and electric power plan—

Hearings, 19273

Patent and Trademark Office

PROPOSED RULES

Patent and trademark cases:

Trademark Law Revision Act; implementation, 19286

Personnel Management Office

NOTICES

Meetings:

Federal Prevailing Rate Advisory Committee, 19272

Presidential Documents**PROCLAMATIONS***Special observances:*

Jewish Heritage Week (Proc. 5966), 19153

Public Health Service

See also Food and Drug Administration; Health Resources and Services Administration

NOTICES

Organization, functions, and authority delegations:

Health Resources and Services Administration, 19238

Railroad Retirement Board**NOTICES**

Agency information collection activities under OMB review, 19274

Securities and Exchange Commission**NOTICES**

Applications, hearings, determinations, etc.:

Public utility holding company filings, 19274

Small Business Administration**NOTICES**

Disaster loan areas:

Texas et al., 19275

Meetings; regional advisory councils:

Texas, 19275

Social Security Administration**RULES**

Supplemental security income:

Public emergency shelters for homeless; underpayments exclusion; and benefit rate increase for individuals in medical care facilities, 19162

NOTICES

Organization, functions, and authority delegations, 19239

State Department**NOTICES**

Fishermen's Protective Act Procedures:

Refund of fees, 19276

Surface Mining Reclamation and Enforcement Office**RULES**

Initial and permanent regulatory programs:

Surface coal mining and reclamation operations; civil penalties use to reclaim mined, abandoned, or inadequately reclaimed lands, 19342

NOTICES

Agency information collection activities under OMB review, 19250

Trade Representative, Office of United States**NOTICES**

United States-Israel Free Trade Area Agreements;

accelerated elimination of duties for certain products, 19273

Transportation Department

See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Maritime Administration

Treasury Department

See also Internal Revenue Service

NOTICES

Notes, Treasury:

Y-1991 series, 19280

United States Information Agency**NOTICES**

Agency information collection activities under OMB review, 19281

Grants and cooperative agreements; availability, etc.:

Private non-profit organizations in support of international educational and cultural activities, 19281

Separate Parts In This Issue**Part II**

Department of Commerce, Patent and Trademark Office, 19286

Part III

Department of Labor, Employment and Training Administration, 19316

Part IV

Department of Education, 19334

Part V

Department of Defense, General Services Administration, and National Aeronautics, 19339

Part VI

Department of the Interior, Surface Mining Reclamation and Enforcement Office, 19342

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

5966..... 19153

12 CFR

549..... 19155

569a..... 19155

569c..... 19155

14 CFR

71 (5 documents)..... 19157-

19159

75..... 19160

Proposed Rules:

71 (2 documents)..... 19195,

19196

18 CFR

271..... 19161

20 CFR

416..... 19162

Proposed Rules:

626..... 19316

636..... 19316

638..... 19316

675..... 19316

676..... 19316

677..... 19316

678..... 19316

679..... 19316

680..... 19316

684..... 19316

685..... 19316

688..... 19316

689..... 19316

21 CFR

177..... 19283

520..... 19283

23 CFR**Proposed Rules:**

658..... 19196

26 CFR

1 (2 documents)..... 19165,

19283

602 (2 documents)..... 19165,

19283

30 CFR

845..... 19342

33 CFR

3..... 19166

100 (2 documents)..... 19166,

19167

165..... 19168

34 CFR

251..... 19334

37 CFR**Proposed Rules:**

1..... 19286

2..... 19286

40 CFR

52 (3 documents)..... 19169-

19173

271..... 19184

45 CFR**Proposed Rules:**

233..... 19197

48 CFR**Proposed Rules:**

13..... 19339

50 CFR

661..... 19185

Proposed Rules:

611..... 19199

675..... 19199

Presidential Documents

Title 3—

Proclamation 5966 of May 1, 1989

The President

Jewish Heritage Week, 1989

By the President of the United States of America

A Proclamation

The rich heritage of the Jewish people has been an inspiration to Americans since the founding of our Nation. The Judaic traditions of defending freedom, promoting justice, and assisting those in need are embraced by our Nation's own laws and customs.

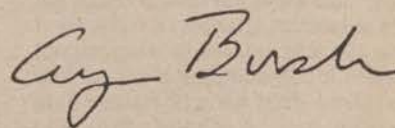
Like so many others, Jews came to the United States in search of freedom and a chance to build a better life. They found this land rich in educational and economic opportunities and have taken advantage of them. In return, they have made important contributions to every sphere of American life, from medicine and academia to the arts, business, and community service.

At this time of year, it is appropriate to reflect on the suffering in recent Jewish history, as well as the grounds for hope. In early May, we commemorate the courage and faith of the six million European Jews who perished at the hands of Nazis between 1939 and 1945. On May 10, we celebrate 41 years of Israeli independence. The establishment and survival of the State of Israel following the Holocaust is a powerful reminder that hope can conquer tragedy and that freedom can survive even the most ruthless attempts to defeat it. Its anniversary is a fitting occasion for Americans to rededicate ourselves to the cause of liberty and justice for all.

The Congress, by Senate Joint Resolution 25, has designated the period of May 7 through May 14, 1989, as "Jewish Heritage Week" and has requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of May 7 through May 14, 1989, as "Jewish Heritage Week." I call upon the American people, State and local government agencies, and interested organizations to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



Rules and Regulations

Federal Register

Vol. 54, No. 85

Thursday, May 4, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 549, 569a, and 569c

[No. 89-1374]

Federal Home Loan Banks as Secured Creditors

Date: April 27, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is promulgating as a final rule a new section of its receivership regulations at 12 CFR Part 569c that recognizes the role of the Federal Home Loan Banks ("Banks") as special purpose lenders to the thrift industry and, sets forth certain rights of the Banks with respect to collateral securing advances, and provides certain procedures to implement these rights. In addition, this document amends 12 CFR Parts 549 and 569a to reflect the adoption of this final rule.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 906-6428; or Jody E. Kresch, Attorney, Office of General Counsel, (202) 906-7204, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction—Statutory and Regulatory Background

Existing regulations, codified in the Rules and Regulations for the Federal savings and loan system, provide for the conduct of federal association receiverships in Part 549. In addition, if the FSLIC is appointed as receiver for a state chartered association pursuant to

section 406(c)(1)(B) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B), the Board has by order and pursuant to section 406(c)(1)(B)(i)(II), 12 U.S.C. 1729(c)(1)(B)(i)(II), directed the receivership to operate under Part 549. If the FSLIC is appointed as receiver for a state chartered association pursuant to section 406(c)(2) of the National Housing Act, 12 U.S.C. 1729(c)(2), the receiver operates under Part 569a of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation.

In the Federal Register of November 27, 1985 (50 FR 48970) the Board proposed extensive revisions to its regulations covering the conservatorship and receivership of Federal and other FSLIC insured institutions ("Proposal"). These proposed regulations have not been adopted in full, but selected portions have been promulgated, such as the rules on priority of claims (53 FR 25129 (July 5, 1988), 53 FR 30665 (Aug. 15, 1988)).

The Proposal contained a specific provision at 12 CFR 569c.8-1, concerning the status of Federal Home Loan Banks ("Banks") as secured creditors. This provision recognized that the Banks have a unique role as special lenders to the thrift industry, and that this unique role entitles the Bank to distinctive treatment on specific matters. Congress recognized this in the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, section 306(d), 101 Stat. 552, 601-02 ("CEBA"), which added section 10(e) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(e) (1988), to provide for the priority of Federal Home Loan Bank security interests over the claims and rights of any other party except those claims entitled to priority under otherwise applicable law and held by actual bona fide purchasers for value or by actual secured parties that are secured by actual protected interests. Since publication of the Proposal in 1985, there has been a substantial increase in the number of thrift institutions that have undergone liquidation and payment of insurance following the appointment of a receiver, and it is reasonable to assume that this pace will continue. This increase in liquidating receivership insurance actions has presented several additional concerns not addressed in the Proposal

¹ Another subsection (e), concerning qualified thrift lenders, was also enacted in the Competitive Equality Banking Act of 1987.

with respect to the Banks, including the concerns addressed in CEBA. Accordingly, the Board has determined that it is desirable to adopt a regulation recognizing the unique role of the Banks and setting forth expressly their rights vis-a-vis collateral securing Bank advances in situations in which a receiver is appointed, not to effect a purchase and assumption transaction, but to liquidate assets over time, accompanied by the FSLIC's payment of insurance on accounts.

II. Section 569c.8-1 Federal Home Loan Banks as Secured Creditors

The following discussion summarizes the provisions of § 569c.8-1.

Paragraph (a) reiterates section 10(e) of the Federal Home Loan Bank Act added by section 306(e) of CEBA and contemplates that the receiver shall recognize the priority of the security interest of a Bank, subject to the exceptions set forth in section 10(e).

Paragraph (b) recognizes that a Bank may in some cases acquire a security interest without taking possession of collateral; and paragraph (b) confirms that the Bank is entitled to take possession of collateral notwithstanding that a receiver has been appointed.

Paragraph (c) provides procedures for the liquidation of collateral securing Bank advances when the Receiver does not enter into a purchase and assumption transaction. The Board has determined that the Banks, because of their unique role, which is recognized by CEBA, should be entitled to certain protections if a Receiver has been appointed and a purchase and assumption transaction has not occurred. To protect the interests of the Receiver and the Bank in the liquidation of assets serving as collateral for Bank advances, the regulation provides that the receiver and the Bank shall attempt to develop a mutually agreeable plan for the payment of outstanding advances and for the liquidation of collateral. If a plan cannot, in good faith, be developed or if, in the interim, adverse market changes are occurring which the Bank in good faith reasonably concludes could cause the collateral value to decrease to such an extent that the Bank's claim would not be satisfied in full, then the Bank may proceed to liquidate the collateral, provided it does so in good faith and in a commercially reasonable

manner and otherwise in accordance with applicable laws.

Paragraph (d) implements section 10(d) of the Federal Home Loan Bank Act by permitting the Bank to require the deposit of additional or substituted collateral when deemed necessary for its protection, notwithstanding any provision of state law. It is similar to language contained in Proposed Regulation § 569c.8-1(b).

Paragraph (e) sets forth the circumstances under which the receiver shall honor a claim for a prepayment fee by a Bank. Prepayment fees are an integral part of the operations of the Banks, which may issue long term obligations in order to make prudent long term advances to members. Because of this matched funding, prepayment of long term advances can result in losses to a Bank, depending upon reinvestment opportunities available at the time of such prepayment. Accordingly, the paragraph provides for the allowance of a prepayment fee to the Bank set forth in a written contract, provided that the fee shall not exceed the present value of any economic loss suffered by the Bank and the collateral is sufficient to pay in full the principal and interest due on secured advances and the applicable prepayment fee.

The Board has deferred for later consideration whether it is appropriate to require the Bank to provide a discount to the receiver when the Bank would realize an economic gain from the prepayment.

This regulation, effective April 27, 1989, is being issued without the notice and comment procedures of the Administrative Procedure Act, and without the thirty (30) day period delayed effectiveness generally required by that Act. Pursuant to 5 U.S.C. 553(b)(3)(B), 553(d)(3) and in accordance with the Board's regulations published at 12 CFR 508.11 and 508.14, the Board finds good cause for waiving these requirements in the necessity to ensure the continuing provision of advances to the thrift industry on reasonable terms by the industry's special purpose lender. To ensure this flow at a critical period for the industry, it is necessary that the Banks operate with greater certainty concerning their rights with respect to collateral securing advances.

III. Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above

in **SUPPLEMENTARY INFORMATION** regarding this final rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

3. *Significant alternatives minimizing small entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed \$100 million." 13 CFR 121.13(a) (1988). This final rule treats all institutions in the same manner, and this rule will not have a substantial impact on small entities.

List of Subjects in 12 CFR Parts 549, 569a and 569c

Savings and loan associations.

Accordingly, the Board hereby amends Part 549, Subchapter C, Part 569a, Subchapter D and Part 569c, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

PART 549—POWERS OF RECEIVER AND CONDUCT OF RECEIVERSHIP

Subchapter C—Federal Savings and Loan System

1. The authority citation for Part 549 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 122 FR 4981, 3 CFR, 1943—48 Comp., p. 1071.

2. Section 549.5-1 is amended by adding paragraph (b)(6) to read as follows:

§ 549.5-1 Deposit associations.

(b) * * *

(6) Section 569c.8-1 shall govern the rights of the Federal Home Loan Banks with respect to all FSLIC receiverships to which Part 549 is applicable.

PART 569a—RECEIVERS FOR INSURED INSTITUTIONS OTHER THAN FEDERAL ASSOCIATIONS

Subchapter D—Federal Savings and Loan Insurance Corporation

3. The authority citation for Part 569a continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462-1464); secs. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1726, 1728-1730);

sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

4. Section 569a.7 is revised to read as follows:

§ 569a.7 Priority of claims.

(a) Section 569c.11 shall govern the priorities of unsecured claims with respect to all FSLIC receiverships to which Part 569a is applicable.

(b) Section 569c.8-1 shall govern the rights of the Federal Home Loan Banks with respect to all FSLIC receiverships to which Part 569a is applicable.

PART 569c—RECEIVERSHIP RULES

Subchapter D—Federal Savings and Loan Insurance Corporation

1. The authority citation for Part 569c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 406, 48 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-1948 Comp., p. 1071.

2. Section 569c.8-1 is added to read as follows:

§ 569c.8-1 Federal Home Loan Banks as secured creditors.

(a) Notwithstanding any other provisions of federal or state law or any other provisions of these regulations, the receiver of a borrower from a Federal Home Loan Bank shall recognize the priority of any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member, whether such security interest is in specifically designated assets or a blanket interest in all assets or categories of assets, over the claims and rights of any other party (including any receiver, conservator, trustee or similar party having rights of a lien creditor) other than claims and rights that

(1) Would be entitled to priority under otherwise applicable law; and

(2) Are held by actual bona fide purchasers for value or by actual secured parties that are secured by actual perfected security interests.

(b) If the receiver rather than the Bank shall have possession of any collateral consisting of notes, securities, other instruments, chattel paper or cash securing advances of the Bank, the receiver shall, upon request by the Bank, promptly deliver possession of such collateral to the Bank or its designee.

(c) In the event that a receiver is appointed for any member of a Federal Home Loan Bank, the following procedures shall apply:

(1) The receiver and the Bank shall immediately seek and develop a mutually agreeable plan for the payment of any advances made by the Bank to such borrower or for the servicing, foreclosure upon and liquidation of the collateral securing any such advances, taking into account the nature and amount of such collateral, the markets in which such collateral is normally traded or sold and other relevant factors.

(2) In the event that the receiver and the Bank shall not, in good faith, be able to develop such a mutually agreeable plan, or, in the interim, the Bank in good faith reasonably concludes that the value of such collateral is decreasing, because of interest rate or other market changes, at such a rate that to delay liquidation or other exercise of the Bank's rights as a secured party for the development of a mutually agreeable plan could reasonably cause the value of such collateral to decrease to an amount that is insufficient to satisfy the Bank's claim in full, the Bank may, at any time thereafter if permitted to do so by the terms of the advances or other security agreement with such borrower or otherwise by applicable law, proceed to foreclose upon, sell, lease or otherwise dispose of such collateral (or any portion thereof), or otherwise exercise its rights as a secured party, provided that the Bank acts in good faith and in a commercially reasonable manner and otherwise in accordance with applicable law.

(3) The foregoing provisions of this paragraph (c) shall not apply in the event that a purchase and assumption transaction is entered into regarding any such member.

(d) The Bank's rights pursuant to the second sentence of section 10(d) of the Federal Home Loan Bank Act shall not be affected or diminished by any provisions of state law that may be applicable to a security interest in property of the member.

(e) The receiver for a borrower from a Federal Home Loan Bank shall allow a claim for a prepayment fee by the Bank if, and only if:

(1) Made pursuant to a written contract that provides for a prepayment fee, provided, however, that such prepayment fee allowed by the receiver shall not exceed the present value of the loss attributable to the difference between the contract rate of the secured borrowing and the reinvestment rate then available to the Bank; and

(2) The indebtedness owed to the Bank by such borrower is secured by sufficient collateral in which a perfected security interest in favor of the Bank exists or as to which the Bank's security interest is entitled to priority under the

Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, section 306(d), 101 Stat. 552, 601-02, or otherwise so that the aggregate of the outstanding principal on the advances secured by such collateral, the accrued by unpaid interest thereon and the prepayment fee applicable to such advances can be paid in full from the amounts realized from such collateral. For purposes of this paragraph (e)(2), the adequacy of such collateral shall be determined as of the date such prepayment fees shall be due and payable under the terms of the written contract providing therefor.

By the Federal Home Loan Bank Board.
John M. Buckley, Jr.,
Secretary.

[FR Doc. 89-10716 Filed 5-3-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-2]

Amendment to Control Zones:
Huntsville, AL; Savannah, GA;
Lexington, KY; and Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment permits the effective hours of the control zones at Huntsville, AL; Savannah, GA; Lexington, KY; and Knoxville, TN, to be changed via Notice to Airmen (NOTAM). The National Weather Service (NWS) intends to reduce operating hours at each of these locations. Designation of the control zones is dependent on the availability of weather observations. In the event that properly certificated weather observers are not available to take and disseminate weather observations, this amendment allows the dates/times of operation of the control zones to be announced in advance by NOTAM, and, thereafter, as published in the airport/facility directory.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On March 10, 1989, the FAA proposed to amend Part 71 of the Federal Aviation

Regulations (14 CFR Part 71) to amend the Huntsville, AL; Savannah, GA; Lexington, KY; and Knoxville, TN, control zones (54 FR 10166). The NWS has expressed plans to reduce operating hours at these locations. Designation of the control zones is dependent on the availability of weather observations. In the event that properly certificated weather observers are not available to take required weather observations, this amendment to the existing control zone descriptions will allow dates/times of operation of the control zones to be announced in advance by NOTAM, and, thereafter, as published in the airport/facility directory. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the description of the Huntsville, AL; Savannah, GA; Lexington, KY; and Knoxville, TN, control zones. This amendment allows the effective dates/times of the control zones to be changed via NOTAM in the event properly certificated weather observers are not available to take required weather observations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal

Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Huntsville, AL [Amended]

Savannah, GA [Amended]

Lexington, KY [Amended]

Knoxville, TN [Amended]

Add the following sentences to the existing descriptions: "This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the airport/facility directory."

Issued in East Point, Georgia, on April 20, 1989.

William D. Wood,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-10662 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-6]

Revision of Control Zone, Covington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Covington, KY, control zone. This action deletes an arrival area extension based on the Runway 36 ILS localizer south course. The extension is no longer required for airspace protection. Also, the geographic position coordinates of the Greater Cincinnati Airport have been corrected.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:
History

On March 1, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Covington, KY, control zone (54 FR 8551). The proposed revision would eliminate an arrival area extension and correct the geographic position coordinates of the Greater Cincinnati Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Covington, KY, control zone by eliminating the arrival area extension based on the Runway 36 ILS localizer south course and corrects the geographic position coordinates of the Greater Cincinnati Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Covington, KY [Revised]

Within a 5-mile radius of Greater Cincinnati International Airport (Lat. 39°02'52" N., Long. 84°40'00" W.)

Issued in East Point, Georgia, on April 20, 1989.

William D. Wood,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-10660 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-44]

Establishment of Transition Area: Coughatta, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This corrective action changes the effective date of the establishment of the transition area located at Coughatta, LA, from June 1, 1989, to September 21, 1989. The proposed commissioning date of the new Coughatta Nondirectional Radio Beacon (NDB) has been delayed, thus requiring the effective date to also be delayed. The intended effect of this action is only to delay the effective date of the establishment of Coughatta, LA, Transition Area.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document FR 89 8356 was published on April 10, 1989, establishing a transition area at Coughatta, LA. The development of a new standard instrument approach procedure (SIAP) to the Red River Airport, utilizing the new Coughatta NDB, made this action necessary. However, an unforeseen delay in the commissioning of the Coughatta NDB has required the effective date of this action to also be delayed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on April 20, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-10659 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-18]

Amendment to Transition Area, Plains, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment to the Plains, GA, Transition Area contains two minor changes. The Transition Area has an arrival area extension based on the Albany VORTAC 350° radial. Effective July 27, 1989, the name of the VORTAC will change from Albany to Pecan. Also, the arrival area extension will be realigned 2° to coincide with the instrument approach procedure serving the airport. No significant change in airspace is intended by these actions.

DATE: Effective Date: 0901 u.t.c., July 27, 1989.

Comments. Must be received on or before June 20, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-18, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT:

James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule which involves amending the description of the Plains, GA, Transition Area, these changes are so minor and nonsubstantive that prior public notice is considered unnecessary. No significant change in airspace will result from these actions. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the description of the Plains, GA, Transition Area by changing the reference to Albany VORTAC which is being renamed the Pecan VORTAC. Also, the arrival area extension is being realigned 2° to coincide with the instrument approach procedure serving the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to make minor and nonsubstantive changes in the description of the Transition Area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Plains, GA [Amended]

By deleting the phrase "within 5 miles each side of the Albany VORTAC 350° radial" and substituting the phrase "within 5 miles each side of the Pecan VORTAC 352° radial."

Issued in East Point, Georgia, on April 20, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-10661 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-10]

Amendment to Transition Area, Springfield, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Springfield, KY, Transition Area adds an arrival area extension to accommodate a planned Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway 11 at the Lebanon-Springfield Airport. Subsequent to the Notice of Proposed Rulemaking (NPRM), it was determined

that the width of the proposed arrival area extension should be increased from 3 to 5 miles, each side of the 280° bearing of the Springfield NDB. This will afford necessary airspace protection for both the planned NDB SIAP and the existing VOR/DME Runway 11 SIAP. Also, a minor correction is being made to the geographic position coordinates of the Lebanon-Springfield Airport.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT:

James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On March 1, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Springfield, KY, Transition Area (54 FR 8552). The proposed action would add an arrival area extension to accommodate an NDB SIAP to Runway 11 at the Lebanon-Springfield Airport. Subsequent to issuance of the NPRM, it was determined that the width of the arrival area extension should be increased from 3 to 5 miles, each side of the 280° bearing of the Springfield NDB. This will provide necessary controlled airspace for the planned NDB SIAP and the existing VOR/DME Runway 11 SIAP. Also, a minor correction was proposed to the airport geographic position coordinates. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The increased width of the arrival area extension is viewed as an insignificant change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Springfield, KY, Transition Area by adding an arrival area extension to provide additional controlled airspace for aircraft executing SIAPs to the Lebanon-Springfield Airport. Also, this action corrects the geographic position coordinates of the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Springfield, KY [Amended]

By amending the Lebanon-Springfield Airport coordinates to read, "(Lat. 37°38'01"N., Long. 85°14'32"W.)" and by adding the following statement to the end of the existing description: "and within 5 miles each side of the 280° bearing from the Springfield NDB (Lat. 37°38'22"N., Long. 85°14'10"W.), extending from the 6.5-mile radius area to 9 miles west of the NDB."

Issued in East Point, Georgia, on April 20, 1989.

William D. Wood,

Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-10663 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 88-ACE-12]

Alteration of Jet Route J-148; NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the description of Jet Route J-148, located in

the vicinity of O'Neill, NE, to extend that route direct to Mason City, IA. Pilots normally request this routing and are radar vectored from O'Neill to Mason City. This action provides a chartered route between these points thereby reducing controller workload.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT:

Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1989, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J-148, located in the vicinity of O'Neill, NE, by extending that route from O'Neill to Mason City, IA (54 FR 4295). This action would reduce controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations changes the description of Jet Route J-148, located in the vicinity of O'Neill, NE, to extend J-148 direct to Mason City, IA. Pilots normally request this routing and are radar vectored from O'Neill to Mason City. This action provides a chartered route between these points thereby reducing controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-148 [Amended]

By removing the words "to O'Neill, NE," and substituting the words "O'Neill, NE; to Mason City, IA."

Issued in Washington, DC, on April 26, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-10664 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Maximum Lawful Prices for May, June, and July 1989

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order of the Director, OPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of May, June, and July, 1989. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Garry L. Penix, (202) 357-8666.

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

Order of the Director, OPR

Issued April 28, 1989

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and

inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of May, June, and July, 1989 are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to May, 1989 are found in the tables in § 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Warren C. Edmunds,

Deputy Director, Office of Pipeline and Producer Regulation.

1. The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

TABLE I—NATURAL GAS CEILING PRICES (OTHER THAN NGPA SECS. 104 AND 106(A))

[Maximum lawful price per MMBtu for deliveries in]

| Subpart of part 271 | NGPA section | Category of gas | May 1989 | June 1989 | July 1989 |
|---------------------|--------------|---|----------|-----------|-----------|
| B..... | 102 | New natural gas, certain OCS gas ¹ | \$5.273 | \$5.307 | \$5.342 |
| C..... | 103(b)(1) | New onshore production wells ² | 3.423 | 3.434 | 3.446 |
| E..... | 105(b)(3) | Intrastate existing contracts..... | 5.063 | 5.092 | 5.121 |
| F..... | 106(b)(1)(B) | Alternative maximum lawful price for certain intrastate rollover gas ³ | 1.958 | 1.965 | 1.972 |
| G..... | 107(c)(5) | Gas produced from tight formations..... | 6.846 | 6.868 | 6.892 |
| H..... | 108 | Stripper gas..... | 5.646 | 5.683 | 5.720 |
| I..... | 109 | Not otherwise ⁴ covered..... | 2.833 | 2.842 | 2.852 |

¹ Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

² Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

³ Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See Part 272 of the Commission's regulations.)

⁴ The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for May, June, and July, 1989 in Tables I and II.

TABLE II.—NATURAL GAS CEILING PRICES:
NGPA §§ 104 AND 106(a) (SUBPART D,
PART 271)

| Category of natural gas and type of sale or contract | May 1989 | June 1989 | July 1989 |
|--|----------|-----------|-----------|
| Maximum lawful price per MMBtu for deliveries made in: | | | |
| Post-1974 gas: ² All producers..... | \$2.833 | \$2.842 | \$2.852 |
| 1973-1974 Biennium gas: | | | |
| Small producer..... | 2.392 | 2.400 | 2.408 |
| Large producer..... | 1.831 | 1.837 | 1.843 |
| Interstate Rollover gas: All producers..... | 1.052 | 1.056 | 1.060 |
| Replacement contract gas or recompletion gas: | | | |
| Small producer..... | 1.344 | 1.349 | 1.354 |
| Large producer..... | 1.030 | 1.033 | 1.036 |
| Flowing gas: | | | |
| Small producer..... | .679 | .681 | .683 |
| Large producer..... | .573 | .575 | .577 |
| Certain Permian Basin gas: | | | |
| Small producer..... | .802 | .805 | .808 |
| Large producer..... | .708 | .710 | .712 |
| Certain Rocky Mountain gas: | | | |
| Small producer..... | .802 | .805 | .808 |
| Large producer..... | .679 | .681 | .683 |
| Certain Appalachian Basin gas: | | | |
| North subarea contracts dated after 10-7-69..... | .645 | .647 | .649 |
| Other contracts..... | .597 | .599 | .601 |
| Minimum rate gas: All producers ¹ | .353 | .354 | .355 |

¹ Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

² This price may also be applicable to other categories of gas (see § 271.402 and 271.602).

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the month of May, June, and July, 1989 in Table III.

Table III.—Inflation Adjustment

| Month of Delivery 1989— | Factor ¹ |
|-------------------------|---------------------|
| May..... | 1.00335 |
| June..... | 1.00335 |
| July..... | 1.00335 |

¹ Factor by which price in preceding month is multiplied.

[FR Doc. 89-10623 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AC54

Public Emergency Shelters for the Homeless, Exclusion of Underpayments, Increase in Benefit Rate for Individuals in Medical Care Facilities

AGENCY: Social Security Administration, HHS.

ACTION: Interim Rules with request for comments.

SUMMARY: These interim rules reflect sections 9113, 9114, and 9119 of Public Law (Pub. L.) 100-203, the Omnibus Budget Reconciliation Act of 1987, signed into law on December 22, 1987. They affect applicants for and recipients of Supplemental Security Income (SSI) payments. These regulations increase the number of months an individual who resides in a public emergency shelter for the homeless may be eligible for SSI payments, extend the time period during which certain retroactive benefit payments made under the Federal Old-Age, Survivors, and Disability Insurance (OASDI) or SSI programs will be excluded from resources, and increase the SSI Federal benefit rate for individuals in certain medical institutions where Medicaid pays more than half the cost of their care. These interim rules also provide that States making an optional supplementary payment to residents in these medical institutions on or after October 1, 1987, and before July 1, 1988, are required to continue making such payments. Thus, the increase in the Federal payment for individuals in these medical institutions is passed along to the recipients.

DATES: These rules are effective on May 4, 1989. We will consider any comments we receive by July 3, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected

during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry Lerner, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1756.

SUPPLEMENTARY INFORMATION: Section 9113 of Pub. L. 100-203 extends from up to 3 months in any 12-month period to up to 6 months in any 9-month period the length of time throughout which an individual residing in a public emergency shelter for the homeless may be eligible to receive SSI payments. This change is effective January 1, 1988. Section 1611(e)(1)(A) of the Social Security Act (the Act) provides that, with certain limited exceptions, no otherwise eligible individual may be eligible for SSI benefits for any months throughout which he or she is a resident of a public institution. Sections 1611(e)(1)(B) and (C) provide exceptions for residents of certain medical institutions which receive payments for the cost of an individual's care from Medicaid and for residents of publicly operated community residences having 16 or fewer residents. Section 1611(e)(1)(D), added by section 403 of Pub. L. 98-21, provides another exception to the general limitation on SSI eligibility for residents of public institutions. Section 1611(e)(1)(D), before it was amended by Pub. L. 100-203, provided that an aged, blind, or disabled individual who is a resident of a public emergency shelter for the homeless throughout a month could be eligible for SSI benefits for up to 3 months of such residence in any 12-month period. This is reflected in our regulations at § 416.211(d). As amended by section 9113 of Pub. L. 100-203, effective January 1, 1988, section 1611(e)(1)(D) now provides eligibility for benefits to such residents of public emergency shelters for the homeless for up to 6 months in any 9-month period. Section 9113 further provides that months before January 1988 in which an individual was eligible under section 1611(e)(1)(D) are not to be taken into account in determining this eligibility. The regulations at § 416.211(d) are being changed to so provide.

These interim regulations also amend § 416.201 to define "any 9-month period," delete the definition of "any 12-month period," and provide that January 1988 is the earliest possible month in any 9-month period.

Section 9114 of Pub. L. 100-203 amended section 1613(a)(7) of the Act to extend temporarily by 3 months the

period during which any retroactive benefit payments made under the OASDI or SSI programs are excluded from an individual's resources for SSI eligibility purposes. Prior to this amendment, section 1613(a)(7) provided that any such payments be excluded from resources for the first 6 months following the month of receipt of the retroactive benefits. As now amended, any such retroactive benefits received by an individual during the period beginning October 1, 1987, and ending September 30, 1989, are excluded from resources for the first 9 months following the month of their receipt. These interim regulations add language to § 416.1233 of our regulations to reflect this temporary increase in the length of time within which such retroactive benefits are excluded from consideration as a resource.

Section 9119(a) of Pub. L. 100-203 amended section 1611(e)(1)(B) of the Act to increase the benefit rate of SSI recipients in certain medical institutions which receive payments for the cost of their care from Medicaid. This benefit rate, which is applicable to persons residing in medical care facilities where more than 50 percent of the cost of their care is paid by Medicaid, was increased from \$25 to \$30 a month for an individual and from \$50 to \$60 a month for a couple if both are in such a hospital, home, or facility. This increase was effective July 1, 1988. As under prior law, the SSI benefit rate is reduced by the amount of any income not specifically excluded from consideration as income by section 1612(b) of the Act or other Federal laws. These interim regulations make the changes necessary to §§ 416.414(b), 416.432 (a) and (b), 416.1160(b)(2)(ii), 416.1163(f)(5), and 416.1165(g)(6) to describe this increased benefit rate.

Section 9119(b) amended section 1618 of the Act to require those States that make supplementary payments to individuals in certain medical institutions which receive payments for the cost of the individual's care from Medicaid to "passalong" the increase by maintaining their supplementary payment levels in effect October 1, 1987 (or if a State first makes the payments after October 1, 1987, but before July 1, 1988, the level for the first month payments are made). This provision is also effective July 1, 1988. The requirement will be reflected in the revised regulations. These interim regulations provide that "passalong" applies to certain State supplementary payments received by residents of Medicaid facilities, as defined in § 416.2096(d). The legislation specifically

mentions that the combined Federal/State payment amount must be increased by \$5/\$10 (individual/couple) effective July 1, 1988. If a State was not making a payment to a resident of a Medicaid facility on June 30, 1988, there was no combined amount to increase. If a State began a supplementary payment after June 30, 1988, the \$5/\$10 increase was already reflected in the Federal benefit rate (\$30/\$60). Therefore, this passalong requirement is not applicable to State supplementary payments begun after June 30, 1988. The changes to §§ 416.2095 through 416.2099 made by these interim regulations describe the passalong requirements a State must meet to maintain its supplementary payment level. States which elect to comply with the passalong requirements of section 1618(g) of the Act by the maintenance of the payment levels method are required to maintain the combined Federal/State payment level payable to residents of Medicaid facilities increased by the \$5/\$10 increase in the Federal benefit rate payable to such residents effective July 1, 1988. States which elect to comply with section 1618(g) of the Act by the total expenditures method are also required to maintain the combined Federal/State payment level payable to residents of Medicaid facilities. Such States, in effect, comply partly under the total expenditures method and partly under the payment levels method.

We are at this time also correcting an erroneous reference in § 416.1124(a) resulting from earlier changes to this section published at 50 FR 48574, November 26, 1985. The reference should be to paragraph (c)(12) rather than (c)(10).

Justification for Dispensing With Rulemaking Procedures

We are publishing these amendments to the regulations implementing sections 9113, 9114, and 9119 of Pub. L. 100-203 as interim rules instead of proposed rules.

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures. Section 553(b)(3)(B) of the APA exempts application of notice and comment rulemaking procedures "when the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." We

find good cause to dispense with Notice of Proposed Rulemaking in the case of these rules because we find that such rulemaking is "unnecessary" since the statutory provisions upon which the regulations are based are self-executing, and these regulations do not require any exercise of discretion.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, since the program and administrative costs of each of the three provisions discussed in these interim rules are expected to be less than \$100 million and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paper Work Reduction Act

These interim rules impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these interim rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13-807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: January 6, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 3, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart B of Part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93-66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94-

241, 90 Stat. 268; and sec. 2 of Pub. L. 99-643, 100 Stat. 3574.

2. Section 416.201 is amended by revising the first paragraph to read as follows:

§ 416.201 General definitions and terms used in this subpart.

"Any 9-month period" means any period of 9 full calendar months ending with any full calendar month throughout which (as defined in § 416.211) an individual is residing in a public emergency shelter for the homeless (as defined in this section) and including the immediately preceding 8 consecutive full calendar months. January 1988 is the earliest possible month in any 9-month period.

3. Section 416.211 is amended by revising paragraph (d) and the example which follows paragraph (d) to read as follows:

§ 416.211 You are a resident of a public institution.

(d) *Exception for residents of public emergency shelters for the homeless.* For months after December 1987, if you are a resident of a public emergency shelter for the homeless (defined in § 416.201) you may be eligible for SSI benefits for any 6 months throughout which you reside in a shelter in any 9-month period (defined in § 416.201). The 6 months do not need to be consecutive and we will not count as part of the 6 months any prior months throughout which you lived in the shelter but did not receive SSI benefits. We will also not count any months throughout which you lived in the shelter and received SSI benefits prior to January 1988.

Example: You are receiving SSI benefits when you lose your home and enter a public emergency shelter for the homeless on March 10, 1988. You remain a resident of a shelter until October 10, 1988. Since you were not in the shelter throughout the month of March, you are eligible to receive your benefit for March without having this month count towards the 6-month period. The last full month throughout which you reside in the shelter is September 1988. Therefore, if you meet all eligibility requirements, you will also be paid benefits for April through September (6 months during the 9-month period September 1988 back through January 1989). If you are otherwise eligible, you will receive your SSI benefit for October when you left the shelter, since you were not a resident of the shelter throughout that month.

4. The authority citation for Subpart D of Part 416 continues to read as follows:

Authority: Secs. 1102, 1611 (a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security

Act; 42 U.S.C. 1302, 1382 (a), (b), (c), and (e), 1382a, 1382f, and 1383.

5. Section 416.414 is amended by revising paragraphs (b)(1), (b)(2), and (b)(3)(i) to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

(b) *The benefit rates are—*(1) *Eligible individual.* For months after June 1988, the benefit rate for an eligible individual with no eligible spouse is \$30 per month. The benefit payment is figured by subtracting the eligible individual's countable income (see Subpart K) from the benefit rate as explained in § 416.420.

(2) *Eligible couple both in medical care facilities.* For months after June 1988, the benefit rate for a couple is \$60 a month. The benefit payment is figured by subtracting the couple's countable income (see Subpart K) from the benefit rate as explained in § 416.420.

(3) *Eligible couple with one spouse in a medical care facility.* The couple's benefit rate equals:

(i) For months after June 1988, \$30 per month for the spouse in the medical care facility; plus

§ 416.432 [Amended]

6. Section 416.432 is amended by revising "\$25" to "\$30" wherever it appears in paragraphs (a) and (b).

7. The authority citation for Subpart K continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154; sec. 2639 of Pub. L. 98-369, 98 Stat. 1144.

§ 416.1124 [Amended]

8. Section 416.1124 is amended by revising the internal reference in the last sentence of paragraph (a) from "(c)(10)" to "(c)(12)".

§ 416.1160 [Amended]

9. Section 416.1160 is amended by revising "\$25" to "\$30" in the last sentence of paragraph (b)(2)(ii).

§ 416.1163 [Amended]

10. Section 416.1163 is amended by revising "\$25" to "\$30" wherever it appears throughout paragraph (f)(5).

§ 416.1165 [Amended]

11. Section 416.1165 is amended by revising "\$25" to "\$30" in title of paragraph (g)(6) and wherever else it appears in paragraph (g)(6).

12. The authority citation for Subpart L continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154.

13. Section 416.1233 is amended by revising paragraphs (a), (c), and (e) to read as follows:

§ 416.1233 Exclusion of certain underpayments from resources.

(a) *General.* In determining the resources of an eligible individual (and spouse, if any), we will exclude, for 6 months following the month of receipt, the unspent portion of any title II or title XVI retroactive payment received on or after October 1, 1984. *Exception:* We will exclude for 9 months following the month of receipt the unspent portion of any title II of title XVI retroactive payment received during the period beginning October 1, 1987, and ending September 30, 1989. This exclusion also applies to such payments received by any other person whose resources are subject to deeming under this subpart.

(c) *Limitation on exclusion.* This exclusion applies only to any unspent portion of retroactive payments made under title II or XVI. Once the money from the retroactive payment is spent, this exclusion does not apply to items purchased with the money, even if the 6-month or 9-month period, whichever is applicable (see paragraph (a) of this section), has not expired. However, other exclusions may be applicable. As long as the funds from the retroactive payment are not spent, they are excluded for the full 6-month or 9-month period, whichever is applicable.

(e) *Written notice.* We will give each recipient a written notice of the exclusion limitation when we make the retroactive payment.

14. The authority citation for Subpart T of Part 416 continues to read as follows:

Authority: Secs. 1102, 1616, 1618, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382e, 1382g, and 1383; sec. 212 of Pub. L. 93-66, 87 Stat. 155; sec. 401 of Pub. L. 92-603, 86 Stat. 1485; sec. 8 of Pub. L. 93-233, 87 Stat. 956; secs. 1 and 2 of Pub. L. 93-335, 88 Stat. 291.

15. Section 416.2095 is amended by revising the last sentence in paragraph (a)(2) to read as follows:

§ 416.2095 Passalong of Federal benefit increases.

(a) * * *

(2) * * * Except for the supplementary payment level made to residents of Medicaid facilities (see § 416.2096(d)), a State can decrease one or more of its payment levels if it meets an annual total expenditures test.

16. Section 416.2096 is amended by revising paragraph (a), introductory text of (b) and (c), and by adding a new paragraph (d) to read as follows:

§ 416.2096 Basic passalong rules.

(a) *State agreements to maintain supplementary payment levels.* (1) In order to be eligible to receive Medicaid reimbursement, any State that makes supplementary payments, other than payments to residents of Medicaid facilities where Medicaid pays more than 50 percent of the cost of their care (see paragraph (d) of this section for definition of Medicaid facility and § 416.414 for discussion of the reduced SSI benefit amount payable to residents of Medicaid facilities), on or after June 30, 1977, must have in effect an agreement with the Secretary. In this agreement—

(b) *Meeting the passalong requirements—supplementary payment levels.* The provisions of this paragraph do not apply to the supplementary payment level for residents of Medicaid facilities (see paragraph (d) of this section).

(c) *Meeting the passalong requirement—total expenditures.* *Exception.*—The provisions of this paragraph do not apply to the supplementary payment level for residents of Medicaid facilities (see paragraph (d) of this section).

(d) *Payments to residents to Medicaid facilities.* A Medicaid facility is a medical care facility where Medicaid pays more than 50 percent of the cost of a person's care. In order to be eligible to receive Medicaid reimbursement, any State that has a supplementary payment level for residents of Medicaid facilities on or after October 1, 1987, must have in effect an agreement with the Secretary to maintain such supplementary payment level at least equal to the October 1987 level (or if a State first makes such supplementary payments after October 1, 1987, but before July 1, 1988, the level for the first month the State makes such supplementary payments).

17. Section 416.2097 is amended by revising the introductory text in

paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 416.2097 Combined supplementary/SSI payment levels.

(a) Other than the level for residents of Medicaid facilities (see paragraph (d) of this section), the combined supplementary/SSI payment level for each payment category that must be provided in any month after March 1983 (or if a State first made supplementary payments after March 1983, the combined supplementary SSI payment levels in effect the first month the State made supplementary payments) in order for a State to meet the requirement of the first sentence of § 416.2096(b) is the sum of—

(d) The combined supplementary/SSI payment level which must be maintained for residents of Medicaid facilities is the State supplement payment on October 1, 1987, or if no such payments were made on October 1, 1987, the supplementary payment amount made in the first month that a supplementary payment was made after October 1987 but before July 1, 1988, plus the Federal benefit rate in effect in October 1987 increased by \$5 for an individual/\$10 for a couple effective July 1, 1988.

18. Section 416.2098 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 416.2098 Supplementary payment levels.

(a) *General.* For the purpose of determining the combined supplementary/SSI payment levels described in § 416.2097(a) (i.e., the levels that must be provided in any month after March 1983), the supplementary payment level, except for the level for residents of Medicaid facilities (see § 416.2097(d)), for each payment category must be no less than the total Statement payment for March 1983 for that payment category that a State provided an eligible individual (or couple) with no countable income in excess of the FRB for March 1983.

19. Section 416.2099(a) is amended by removing "and" at the end of subparagraph (3), by removing the period at the end of subparagraph (4) and replacing it with "; and" and by adding a new paragraph (a)(5) to read as follows:

§ 416.2099 Compliance with passalong.

(5) The State supplementary payment level payable to residents of Medicaid facilities (see § 416.2096(d)) on October

1, 1987 (or, if a State first makes such supplementary payments after October 1, 1987, but before July 1, 1988, the level for the month the State first makes such supplementary payments). The State shall also report all changes in such payment levels.

[FR Doc. 89-10715 Filed 5-3-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8226]

Consolidated Return Regulations—Adjustments Reflecting a Restructuring of a Consolidated Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary and final regulations.

SUMMARY: This document contains a correction to temporary and final regulations that were published in the *Federal Register* for Thursday, September 8, 1988 (53 FR 34729) as Treasury Decision 8226.

FOR FURTHER INFORMATION CONTACT: Judith C. Winkler, at (202)-377-9665 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary and final regulations that are the subject of this correction adds new temporary regulations §§ 1.1502-31T, 1.1502-33T, and 1.1502-77T to Part 1 of title 26 of the Code of Federal Regulations and makes conforming amendments to §§ 1.1502-31, 1.1502-33, and 1.1502-77.

Need for Correction

As published, Treasury Decision 8226 contains a typographical error that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of Treasury Decision 8226, which was the subject of FR Doc. 88-20394, is corrected to read as follows:

Paragraph 1. On page 34731, third column, the section heading that reads "§ 1.1503-31T" is removed, and the reference is corrected to read "§ 1.1502-31T."

Note: For a Federal Register correction to this document, see the Corrections Section of this issue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-10604 Filed 5-3-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 89-039]

RIN 2115-AD26

Changes to Honolulu and Guam Marine Inspection Zones and Captain of the Port Zones

AGENCY: Coast Guard DOT.

ACTION: Final rule.

SUMMARY: This rule reassigns various Coast Guard Marine Inspection and Captain of the Port Zones within the Fourteenth Coast Guard District to reflect a minor organizational change in the Coast Guard. The Coast Guard Marine Safety Office Guam will assume responsibility for Coast Guard marine safety functions in Palau from the Coast Guard Marine Safety Office Honolulu. This organizational change will not affect any Coast Guard services to the public.

EFFECTIVE DATE: May 4, 1989.

FOR FURTHER INFORMATION CONTACT: Cynthia Clark, Program Analyst, U.S. Coast Guard, Office of Marine Safety and Environmental Protection, Planning Staff, 2100 Second Street SW., Washington, DC 20593-0001. Telephone (202) 267-0784. Normal working hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. These amendments are matters relating to agency organization and are exempt from the notice and comment requirements of 5 U.S.C. 553(b). Since this rule reflects current organizational changes being placed in effect and has no substantive effect, good cause exists to make it effective in less than 30 days after publication under 5 U.S.C. 553(d). The rulemaking merely changes Marine Inspection and Captain of the Port Zones to conform with changes in the Coast Guard's internal organization. There will be no adverse effect on the public since Fourteenth Coast Guard District units will continue to perform all

functions affecting the public that were previously performed.

Drafting Information

The principal persons involved in drafting this rulemaking are Commander M.W. Mastenbrook, Project Manager, Fourteenth Coast Guard District Marine Safety Division; and Commander M.J. Williams, Project Counsel, Fourteenth Coast Guard District Legal Office.

Discussion

A Marine Safety Office is a consolidation of the Marine Inspection Office and the Captain of the Port Office. On June 1, 1988, the Coast Guard established Marine Safety Office Guam. The Coast Guard Marine Safety Office in Guam assumed responsibility for the discharge of Coast Guard marine safety functions for Guam and the Commonwealth of Northern Mariana Islands from the Marine Safety Office in Honolulu. However, the responsibility for marine safety functions for Palau remained with the Marine Safety Office in Honolulu with an assumption that Palau would shortly become independent under a compact of free association like that with Federated States of Micronesia and the Republic of the Marshall Islands. Since Palau's independence has been delayed, the Coast Guard will shift its responsibilities for Palau to the closer Marine Safety Office in Guam. While enabling more efficient internal management and enhancing performance of missions, this organization change will not affect any Coast Guard services to the public.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided for in section 1(a)(3) of the Order. It is considered to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be minimal and further evaluation is unnecessary. This final rule places no requirements on any sector of the public. The rule reflects a change in internal Coast Guard organization and a streamlining of logistics and support functions. In accomplishing this, some functions, and personnel, will be transferred from one location to another. Since the impact of the final rule is minimal, the Coast Guard certifies that it will not have a significant adverse economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

In consideration of the foregoing, Part 3 Title 33 of the Code of Federal Regulations is amended as set forth below.

PART 3—[AMENDED]

1. The authority citation for Part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. In § 3.70-10, paragraph (b) is revised to read as follows:

§ 3.70-10 Honolulu Marine Inspection Zone and Captain of the Port Zone.

(b) The Honolulu Marine Inspection Zone and the Honolulu Captain of the Port Zone boundaries are the boundaries of the Fourteenth Coast Guard District, except for the Territory of Guam, the Commonwealth of the Northern Mariana Islands and Palau.

3. Section 3.70-15, paragraph (b) is revised to read as follows:

§ 3.70-15 Guam Marine Inspection Zone and Captain of the Port Zone.

(b) The Guam Marine Inspection Zone and the Guam Captain of the Port Zone are comprised of the area of the Territory of Guam, the Commonwealth of the Northern Mariana Islands and Palau.

Dated: April 21, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-10615 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD13-89-02]

RIN 2115-AC 84

Marine Parade: Seattle Yacht Club, Opening Day

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard will be closing the Portage Cut (Montlake Cut) to all vessel traffic during the annual parade of boats which transits this waterway during Seattle Yacht Club's Opening Day. This parade consists of several hundred vessels transiting from west to east, through the cut in a solid stream of vessels, thus restricting any opportunity for non-participating vessels to transit through the cut. This event is normally held the first weekend in May of each year. Although an inconvenience to non-participating vessels, the duration of this event will be limited to approximately eight hours. Mass media attention is apparent weeks prior to this event, thus giving the general boating public ample time to plan alternate transit times.

EFFECTIVE DATE: 6 May 1989.

FOR FURTHER INFORMATION CONTACT: LTJG R. Ramsey, Coast Guard Group, Seattle, Washington, (206) 286-5400.

SUPPLEMENTARY INFORMATION: On 13 March, 1989, the Coast Guard published a notice of proposed rule making in the *Federal Register* for these regulations (54 FR 10275). Interested persons were requested to submit comments and *No* comments were received.

Drafting Information

The drafters of this notice are LTJG R.T. Ramsey, project officer, and LT D. Schram, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Comments

The Coast Guard received no comments on the NPRM which was published in the *Federal Register*. There have been no changes to this rule as outlined in the *Federal Register*.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that full regulatory evaluation is unnecessary. The Portage Cut is generally utilized by pleasure craft. The limited commercial traffic affected by this event are given several months warning via the local media and local Notice to Mariners, to schedule their transits prior to or after the parade. Local businesses welcome the economic benefits of the estimated 300,000 spectators. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant negative economic

impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

(Regattas and Marine Parades) Safety of Life on Navigable Waters.

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows.

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Section 100.1304 is added to read as follows:

§ 100.1304, Annual Seattle Yacht Club's "Opening Day" Marine Parade.

(a) *Regulated area.* All of Portage Bay, with the northwestern limit being the University Bridge, through the Portage Cut (Montlake Cut) into and including Union Bay, with the southeastern limit being an imaginary line from Webster Point to the eastern corner of Foster Island.

(b) *Effective period.* This regulation will be in effect from 8:00 a.m. to 3:00 p.m. on the first Saturday of May each year unless otherwise specified in the Thirteenth District Local Notice to Mariners.

(c) *Special Local regulations.* (1) The regulated area shall be closed for the duration of the event to all vessel traffic not participating in the event and authorized by the event sponsor or Coast Guard Patrol Commander.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event. The following are established as spectator areas:

(i) Northwest of the University Bridge.

(ii) North of the log boom which will be placed in Union Bay.

(iii) East of Webster Point so as not to interfere with the participating vessels departing Union Bay.

(3) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times unless cleared for such entry by the Patrol Commander.

(4) Due to the large number of craft confined within this small body of water, all vessels, both spectator and participants, will maintain a "NO

WAKE" speed. This requirement will be strictly enforced to preserve the safety of both life and property.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: April 24, 1989.

Robert E. Kramek,
Commander, Thirteenth Coast Guard District,
DOT-U.S. Coast Guard.

[FR Doc. 89-10616 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-89-05]

Special Local Regulations: Racine on the Lake, Lakefront Airshow, Lake Michigan, Racine, WI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Racine on the Lake, Lakefront Airshow which is to be conducted on Lake Michigan, directly off Racine Harbor, from 1 June through 4 June 1989. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 1 June and terminate on 4 June 1989.

FOR FURTHER INFORMATION CONTACT: MST1 SCOTT E. BEFUS, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District until 6 April 1989, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are MST1 SCOTT E. BEFUS, project officer, Office of Search and Rescue and LCDR

C.V. MOSEBACH, project attorney,
Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Racine on the Lake, Lakefront Airshow will be conducted on Lake Michigan, directly off of Racine Harbor from the 1st of June through the 4th of June 1989. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Kenosha, Wisconsin).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-0905 to read as follows:

§ 100.35-0905 **Racine on the Lake, Lakefront Airshow, Lake Michigan, Racine, WI.**

The following area will be closed to vessel navigation or anchorage from 1:00 P.M. (local time) until 5:00 P.M. on 1 through 4 June 1989.

(a) **Restricted Area:** That portion of Lake Michigan enclosed by the following corner points:

Southeast Corner—42 degrees, 42.9 minutes, 0.0 seconds North; 87 degrees, 45.8 minutes, 0.0 seconds West

Southwest Corner—42 degrees, 42.9 degrees, 0.0 seconds North; 87 degrees, 46.0 minutes, 0.0 seconds West

Northwest Corner—42 degrees, 45 minutes, 0.0 seconds North
Shoreline

Northeast Corner—42 degrees, 45 minutes, 0.0 seconds North; 87 degrees, 45.8 minutes, 0.0 seconds West

(b) *Special Local Regulations:*

(1) The above area will be closed to navigation or anchorage from 1:00 P.M. (local time) until 5:00 P.M. on 1 through 4 June 1989.

(2) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) This section is effective from 1:00 P.M. on 1 June 1989 to 5:00 P.M. on 4 June 1989.

Dated: April 24, 1989.

R.A. Appelbaum,
RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 89-10617 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD 05-89-01]

Regulated Navigation Area, Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the regulated navigation area in 33 CFR 165.501 for Hampton Roads, Virginia, to provide special operating requirements for the Elizabeth River ferries using a dock to be constructed at the foot of High Street in Portsmouth, Virginia. The regulations are designed to ensure the safety of the passengers, the ferries, and other vessels navigating the area.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant D.T. Ormes, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23704-5004, (804) 398-6388.

SUPPLEMENTARY INFORMATION: On January 26, 1989, the Coast Guard published a notice of proposed rulemaking in the *Federal Register* for these regulations (54 FR 3789). Interested persons were requested to submit comments and ten comments were received.

Drafting Information

The drafters of this notice are Lt. D.T. Ormes, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and LCDR R. K. Kutz, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments

Three comments requested that the ferries be allowed to remain moored at the dock, enabling them to adhere to a fixed schedule. The Coast Guard recognizes that passengers depend upon the ferry operator to adhere to a fixed schedule, but the Coast Guard believes that the interest of passenger safety far outweighs the convenience of adhering to a fixed arrival and departure schedule. Due to the location of the dock, as well as the size and density of

passing vessel traffic, the Coast Guard believes that the operator can maintain a schedule by adjusting the ferries' arrival times. This is a safer alternative since it limits the time when the ferries would be at the dock, which is immediately adjacent to the confined channel.

Two comments requested that the Coast Guard modify the regulations to allow a harbor tour vessel to use the new dock. The Coast Guard does not agree with this proposal.

The original permit application to the U.S. Army Corps of Engineers stated that the proposed dock would be used by the existing Elizabeth River ferries. The engineering drawings, as well as considerations of safety and local vessel traffic, were viewed expressly with those vessels in mind.

The Notice of Proposed Rulemaking also was predicated on an understanding that the existing ferries were the vessels to be used. Allowing the proposed ferry dock to be used by any or all vessels would be inconsistent with the original permit application and the scope of this rulemaking effort.

The remaining two comments agreed with the proposed rulemaking as written.

The Coast Guard also received three letters voicing support for the establishment of the ferry dock, but did not address the notice of proposed rulemaking.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. These regulations impose minimum restrictions on how the ferry will operate at the new dock being constructed at the foot of High Street, and should not have any effect on the economic viability of its operation.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they do not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This action has been thoroughly reviewed by the Coast Guard and it has been determined to be excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B.

Federalism Assessment

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.501 is amended by adding paragraphs (d)(11)(iv), (d)(12)(v), and (d)(13) to read as follows:

§ 165.501 Chesapeake Bay Entrance and Hampton Roads, Virginia and Adjacent Waters—Regulated Navigation Area.

(d) Regulations: * * *

(11) *Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Vessel Transits of the Elizabeth River.* * * *

(iv) Notwithstanding paragraph (d)(11)(i) of this section, a vessel may not remain moored at the Elizabeth River Ferry dock at the foot of High Street in Portsmouth, Virginia, when the dock is within a safety zone for a naval aircraft carrier or other large naval vessel.

(12) *Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River.* * * *

(v) Notwithstanding paragraph (d)(12)(i) of this section, a vessel may not remain moored at the Elizabeth River Ferry dock at the foot of High Street in Portsmouth, Virginia, when the dock is within a safety zone for a liquefied petroleum gas carrier.

(13) *Restrictions on the Use of the Elizabeth River Ferry Dock at the Foot of High Street, Portsmouth, Virginia.*

(i) No vessels, other than those being operated as ferries for the Tidewater Transportation District Commission, may embark or disembark passengers or otherwise moor at the Elizabeth River Ferry dock at the foot of High Street, Portsmouth, Virginia.

(ii) Any vessel being operated for the Tidewater Transportation District Commission may not moor at the dock longer than necessary to embark passengers awaiting transportation or disembark passengers already aboard the vessel.

(iii) The matter or another authorized licensed officer must remain in the pilothouse and be prepared to get the vessel underway immediately or take other actions necessary to ensure the safety of the vessel's passengers, whenever a vessel is moored at the dock.

Dated: March 21, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-10618 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3553-1]

Approval and Promulgation of Implementation Plans

In the matter of Kentucky: 401 KAR 61:020, Existing Process Operations, 401 KAR 59:010, New Process Operations, 401 KAR 50:015, Documents Incorporated by Reference, [KY-040].

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 24, 1980 (45 FR 84999), EPA conditionally approved the State Implementation Plan (SIP) revisions which Kentucky developed for total suspended particulate (TSP) nonattainment areas pursuant to Part D of Title I of the Clean Air Act. On December 4, 1986 (51 FR 43742), EPA removed seven of the nine conditions attached to its approval of these revisions. EPA today is removing the remaining two conditions on the approval of Kentucky's Part D TSP SIP. The removal of these last two conditions will render Kentucky's Part D SIP for TSP fully approved. Regulation 401 KAR 50:015 is also being amended to incorporate several test methods referenced in other State and federal regulations. The EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. [The revised standard is expressed in term of particulate matter with a nominal diameter of 10 micrometers or less

(PM₁₀.) However, at the State's option, EPA was to continue to process TSP SIP revisions which were in process at the time the new PM₁₀ standard was promulgated. In the policy published on July 1, 1987 (52 FR 24679, column 2), EPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of state plans specifically aimed at PM₁₀.

EFFECTIVE DATE: This action will be effective July 3, 1989 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit,
Environmental Protection Agency, 401
M Street SW., Washington, DC 20460
U.S. Environmental Protection Agency,
Air Programs Branch, 345 Courtland
Street NE., Atlanta, Georgia 30365
Commonwealth of Kentucky Natural
Resources and Environmental
Protection Cabinet, Division of Air
Pollution Control, Frankfort Office
Plaza, 18 Reilly Road, Frankfort,
Kentucky 40601

Comments should be addressed to
Richard A. Schutt at the EPA address
above.

FOR FURTHER INFORMATION CONTACT:
Richard A. Schutt, U.S. Environmental
Protection Agency, Region IV, Air
Programs Branch, at the above address
or telephone (404) 347-2864 or FTS 257-
2864.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962 at 8996), and September 11, 1978 (43 FR 40412 at 40425), EPA designated several areas in the Commonwealth of Kentucky as nonattainment for certain national ambient air quality standards (NAAQS). Under the Clean Air Act (CAA) amendments of 1977, Kentucky was obligated to establish Part D (nonattainment) SIP revisions for its nonattainment areas. On June 15, 1979, the Kentucky Department for Natural Resources and Environmental Protection adopted the necessary SIP revisions and submitted them to EPA. EPA proposed conditional approval of Kentucky's TSP Part D SIP revisions in the November 15, 1979, *Federal Register* (44 FR 65781).

Since extensive comments were received in response to the November 15, 1979, notice, EPA presented its position in the September 18, 1980, *Federal Register* (45 FR 62163),

Reproposal and Reopening of Comment Period for Kentucky's Particulate Part D Plan Revisions. In that notice, EPA: (1) Responded to comments received in response to the November 15, 1979, notice that related directly to deficiencies found to exist in Kentucky's TSP plan revisions; (2) clarified those deficiencies noted in the November 15, 1979, notice; and (3) described additional deficiencies discovered in the Kentucky revision after publication of the November 15, 1979, notice. On December 24, 1980, EPA conditionally approved Kentucky's SIP revisions developed for TSP nonattainment areas pursuant to Part D of Title I of the Clean Air Act, addressing all comments received in response to the September 18, 1980, proposal notice.

Nine conditions were specified in the December 24, 1980, notice as conditions for full EPA approval of Kentucky's plan. Seven of those nine conditions were proposed to be removed in the October 16, 1985, *Federal Register* notice. No comments were received in response to that proposal. Removal of seven of the nine approval conditions was published as a final rule in the December 4, 1986, *Federal Register* notice. The remaining two conditions are being removed today.

Remaining Conditions

The first of the two remaining conditions specifies that Kentucky should revise Regulation 401 KAR 50:055, Section 2(3), to specify a method other than Method 9 of Appendix A, 40 CFR Part 60, for determining opacity for sources with intermittent emissions. The State attempted to meet this condition by revising the following regulations: 401 KAR 61:075, Steel Plants Using Existing Electric Arc Furnaces; 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces; 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants; and 401 KAR 60:020, Existing Process Operations. The State also developed 401 KAR 61:170, Existing Blast Furnace Casthouses to meet this condition. While these applicable iron/steel industry regulations satisfy this condition for the iron/steel industry, the intent of this condition was to require Kentucky to adopt appropriate opacity determining procedures for all intermittent source types for which Method 9 was inappropriate. The applicable iron/steel regulations were proposed for approval in the October 16, 1985, *Federal Register* notice. Final approval was published in the December 4, 1986, *Federal Register* notice. Kentucky attempted to satisfy this approval condition for other source types by revising Regulation 401 KAR

61:020 at Section 4(6) as follows: "(6) For intermittent emissions, the method to determine opacity shall be a method promulgated by U.S. EPA and subsequently adopted by the Department pursuant to the requirements of KRS Chapter 13." This commitment did not satisfy the present requirement for Reasonably Available Control Technology (RACT) in nonattainment areas. Therefore, action on this condition was deferred until today.

The regulatory changes being approved today to 401 KAR 61:020, Existing Process Operations, are designed to ensure that RACT is installed and consistently maintained in all particulate nonattainment areas. The provisions of 401 KAR 61:020 as amended which apply to existing affected facilities or sources located in nonattainment areas apply to those affected facilities or sources if the area's attainment status changes unless a State Implementation Plan which provides for alternate provisions is approved by EPA. Regulation 401 KAR 61:020, Section 2, Definitions, is amended by adding definitions of both "continuous emissions" and "intermittent emissions" as well as specifying test methods to be used for measuring opacity for the two types of emissions. While Reference Method 9 will still be used to determine opacity of continuous emissions, Kentucky Method 150(F-1) will now be used to measure opacity of intermittent emissions. Regulation 401 KAR 61:020, Section 4, Test Methods and Procedures, is amended by adding Kentucky Method 150(F-1). This method is filed by reference in the current revisions to 401 KAR 50:015 which are being proposed for approval today. Specifically, this test method will require that opacity readings taken every fifteen seconds for three minutes, rather than six minutes, be averaged if the emission being observed persists for less than, or equal to, twelve consecutive observations. Therefore, 401 KAR 61:020, Existing Process Operations, does, in its current amended form, satisfy approval condition (i) on Kentucky's Part D TSP SIP. Since this condition is now satisfied, EPA is removing it. Kentucky has also amended Regulation 401 KAR 59:010 to incorporate the same requirements for new sources as 61:020 does for existing sources. EPA also is approving 59:010.

The second of the two remaining approval conditions specifies that Kentucky should revise Regulation 401 KAR 61:020, Existing Process Operations, Section 3, Standard for Particulate Matter, such that the

regulation has a specific requirement of reasonably available control technology (RACT) applicable to sources of process fugitive emissions. The State attempted to meet this condition by revising 401 KAR 61:020 at Section 3(2)(c) to read as follows: "(c) Fugitive emissions of particulate matter from any affected facility located in any area designated nonattainment for particulate matter under 401 KAR 51:010 shall be subject to reasonably available control technology requirements as set forth in conditions appearing on the operating permit." EPA determined in the October 16, 1985, Federal Register notice that the State's revision to 401 KAR 61:020 does not satisfy this approval condition. In order for this revision to satisfy the approval condition, the State would have to submit approvable (enforceable) permits to EPA for all sources that have a significant impact on the nonattainment areas. Alternatively, the State could satisfy the approval condition by revising 61:020 or adopting new regulations to provide enforceable RACT procedures in regulatory form. EPA decided in the October 16, 1985, Federal Register notice to defer action on this condition until Kentucky corrected its SIP to meet it. Action is being taken on this condition today.

Regulation 401 KAR 61:020 Section 3, Standard for Particulate Matter has been amended to prohibit any continuous or intermittent fugitive emission from equalling or exceeding twenty (20) percent opacity or remaining visible beyond the lot line of the property on which the emission originates. The opacity limitation is a tightening of the previous forty (40) percent opacity limitation. Section 3 is also amended by adding a provision stating that variation from the opacity standard will be considered by the Cabinet when case-by-case circumstances warrant consideration only if such a variance has been approved by the U.S. EPA. This amendment to 401 KAR 61:020 satisfies the condition that Kentucky have a specific requirement of RACT applicable to sources of process fugitive emissions. RACT would, in this case, be defined as those control techniques and equipment necessary to meet the twenty (20) percent opacity standard. Therefore, EPA is removing this second approval condition, condition (v).

Effect of Removal of Conditions

The effect of the approval of Kentucky's amendments to 401 KAR 61:020, 401 KAR 59:010, and 401 KAR 50:015, is to fully approve Kentucky's Part D State Implementation Plan (SIP) as adequate to achieve and maintain the

National Ambient Air Quality Standards for particulate matter.

Only with a fully approved Part D SIP can nonattainment areas which have adequate air quality data be redesignated to attainment, thereby facilitating any expansion of existing sources and the construction or modification of new sources in these areas.

Other Revisions

Regulation 401 KAR 50:015 is also being amended today to incorporate by reference the following reference methods from 40 CFR Part 60 Appendix A: Method 5E, Determination of Particulate Emissions from the Wool Fiberglass Insulation Manufacturing Industry; Method 7B, Determination of Nitrogen Oxide Emissions from Stationary Sources (Ultraviolet Spectrophotometry); and Method 16A, Determination of Total Reduced Sulfur Emissions from Stationary Sources (Impinger Technique). In addition, 401 KAR 50:015 is being amended to incorporate by reference Performance Specification 4, Specifications and test procedures for carbon monoxide continuous emission monitoring systems in stationary sources, from 40 CFR Part 60, Appendix B. The following document from the appropriate "Book of ASTM Standards" from the American Society for Testing and Materials in which the standard appears is also incorporated by reference in the current revisions to 401 KAR 50:015: D 2584-68(79), Standard Test Method for Ignition Loss of Cured Reinforced Resins. These methods and specifications are required in federal New Source Performance Standards (NSPS) which Kentucky is adopting by reference. Regulation 401 KAR 50:015 is also being amended to adopt Methods 209A and 209C from the Standard Methods for the Examination of Water and Wastewater, 15th Edition 1980, and to delete Method 209B. Method 209A will be used to determine compliance with the federal NSPS regulation for new wool fiberglass insulation manufacturing plants. Method 209C will replace Method 209B and will be used to measure total dissolved solids (TDS) in the make-up in by-product coke manufacturing plants. It differs from Method 209B in that the temperature of the drying oven is maintained at 103 °C to 105 °C, instead of 180 °C. Regulation 401 KAR 50:015 in its current amended form, is being approved today.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 3, 1989, unless, within 30 days of its publication, notice is received that

adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 3, 1989.

Final Action: EPA is today approving the revisions to 401 KAR 61:020, Existing Process Operations; 401 KAR 59:010, New Process Operations; and 401 KAR 50:015, Documents Incorporated by Reference, as discussed above. These revisions were submitted to EPA on September 19, 1986, after a public hearing to receive comments on the regulations was conducted on August 28, 1986. Approval of these amended regulations removes conditions necessary for full approval of Kentucky's Part D SIP for TSP, which previously was only conditionally approved. Kentucky now has a fully approved Part D SIP for TSP.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. [See Section 307(b)(2)].

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Date: March 23, 1989.

Lee A. DeHihns, III,

Action Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(60) to read as follows:

§ 52.920 Identification of plan.

(c) * * *

(60) Corrections in Part D TSP SIP and other revisions submitted on September 19, 1986, by the Kentucky Department for Environmental Protection. The removal of these last two conditions renders the Kentucky's Part D SIP for TSP fully approved.

(i) Incorporation by reference.

(A) Revisions in Regulation 401 KAR—

50:015. Documents Incorporated by Reference.

Section 1. Code of Federal Regulations.
Section 3. American Society for Testing and Materials,
Section 8. Kentucky Division of Air Pollution,
Section 10. American Public Health Association, and
Section 11. Availability.

59:010. New process operations.

Section 1. Applicability.
Section 2. Definitions,
Section 3. Standard for Particulate Matter, and
Section 4. Test Methods and Procedures.

61:020. Existing process operations.

Section 1. Applicability
Section 2. Definitions;
Section 3. Standard for Particulate Matter, and
Section 4. Test Methods and Procedures.

These changes were effective September 4, 1986.

(B) Letter of September 19, 1986, from the Kentucky Natural Resources and Environmental Protection Cabinet to EPA.

(ii) Other material—none.

§ 52.935 [Removed and Reserved]

3. Section 52.935, Control strategy: Particulate matter, is removed and reserved.

[FR Doc. 89-8508 Filed 5-3-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3564-7; EPA Docket No. AM051 PA]

Approval of Stack Height Declarations; Philadelphia & Allegheny County, Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Notice of Approval of Stack Height Declarations.

SUMMARY: EPA is approving the declarations by Philadelphia and Allegheny County in Pennsylvania that there are no source emission limits which need to be revised because of the good engineering practice (GEP) stack height regulations.

EFFECTIVE DATE: This approval will become effective on June 5, 1989.

ADDRESSES: Copies of the documentation supporting the declarations are available for public inspection during normal business hours at: U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Joseph Kunz (3AM11).

FOR FURTHER INFORMATION CONTACT: Mr. Denis Lohman (3AM11) at the address above or call (215) 597-8375.

SUPPLEMENTARY INFORMATION: On January 26, 1988 (53 FR 2086), EPA published a Notice proposing to approve the declarations by Philadelphia and Allegheny County concerning emission limitations affected by dispersion techniques. Following the promulgation of the revised stack height regulations on July 8, 1985 (50 FR 27892), all states were required to review all existing emission limitations to determine which, if any, were affected by prohibited dispersion techniques. The January 26, 1988, Notice invited public comment on the declarations that there were no affected sources in Philadelphia or Allegheny County. No comments in response to that invitation were received.

Stack Height Remand

The EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements [40 CFR-51.100(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

The EPA is not acting on the declaration for the Philadelphia Electric Company's Schuylkill plant and the Duquesne Light Company Phillips plant, because they currently receive credit under one of the provisions remanded to the EPA in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). The Philadelphia Department of Public Health, the Allegheny County Bureau of Air Pollution Control and EPA will review the sources for compliance with any revised requirements when the EPA completes rulemaking to respond to the *NRDC* remand. No other sources in Allegheny County or Philadelphia are affected by the remand.

Conclusion: Allegheny County and Philadelphia have satisfied the requirement under Section 406 of the Clean Air Act to review sources and determine that no emission limits have been affected by prohibited dispersion techniques as defined in the July 8, 1985, stack height regulation. EPA has reviewed the declarations submitted by Allegheny County and Philadelphia and, with the exceptions of the Philadelphia Electric Schuylkill plant and the Duquesne Light Company Phillips plant identified above as affected by the remanded provisions, finds that the declarations are justified. Therefore, EPA is approving the declarations as proposed with the two exceptions.

The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements (see Section 307(B)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Reporting and recordkeeping requirements. Sulfur dioxide.

Authority: 42 U.S.C. 7401-7462.

Date: April 10, 1989.

Stanley L. Laskowski,
Acting Regional Administrator.

[FR Doc. 89-10400 Filed 5-3-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3565-2]

Approval and Promulgation of Implementation Plans; Massachusetts Ozone Attainment Plan; Control of Gasoline Volatility**AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions will reduce emissions of volatile organic compounds from gasoline by limiting the Reid Vapor Pressure (RVP) of gasoline sold between June 30 and September 15 in 1989 and between May 1 and September 15 of each year thereafter to 9 pounds per square inch. EPA is also finding that the Massachusetts RVP regulations are "necessary to achieve" the national ambient air quality standard (NAAQS) for ozone and are therefore excepted from preemption under section 211 of the Clean Air Act. The intended effect of this action is to make necessary progress towards attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

EFFECTIVE DATE: June 30, 1989.

ADDRESSES: Copies of the submittal are available for public inspection at U.S. EPA, Room 2311, JFK Federal Building, Boston, MA 02203; and the Department of Environmental Quality Engineering, 1 Winter Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 565-3224 or (FTS) 835-3224.

SUPPLEMENTARY INFORMATION:**Introduction**

This Federal Register notice describes EPA's decision to approve revisions to the Massachusetts SIP which limit the volatility of gasoline from June 30 to September 15 in 1989 and from May 1 to September 15 every year thereafter. The remainder of this preamble is divided into four sections. The first provides the background for this action, with respect to both chronology and the broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them. The final section discusses Massachusetts' revision to the test methods section of the regulations to cure a deficiency identified and discussed in EPA's proposed rulemaking notice.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the Reid Vapor Pressure (RVP) of gasoline to 10 pounds per square inch (psi) starting in the summer of 1988 and to 9 psi in the summer of 1989 and continuing every ozone season thereafter. Since there were delays in adopting necessary regulations, the 1988 limit of 10 psi was eliminated and Massachusetts passed a regulation limiting the RVP of gasoline to 9 psi from May 1 to September 15 starting in 1989 and continuing each year thereafter. On July 13, 1988, Massachusetts submitted a SIP revision to EPA for approval to implement this provision.

On February 23, 1989, EPA published a Federal Register notice (54 FR 7794) proposing approval of the Massachusetts SIP revision. EPA also proposed to find that these revisions were "necessary" to achieve the national ambient air quality standards (NAAQS) for ozone within the meaning of section 211(c)(4)(C) of the Clean Air Act (the Act), in the event that EPA subsequently took final action on federal RVP regulations.

Section 211(c)(4)(A) of the Act states that a state may not, for purposes of motor vehicle emissions control, prescribe or attempt to enforce any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle engine—" (i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless [the] state prohibition or control is identical to the prohibition or control prescribed by the Administrator." At the time of EPA's proposal on the Massachusetts revisions, EPA had proposed, but not taken final action, on federal RVP control regulations.

On March 22, 1989, EPA published a Federal Register notice (54 FR 11868) taking final action on national regulation of RVP, to take effect this summer. The maximum allowed summertime RVP in Massachusetts under the federal regulation is 10.5 psi. Under section 211(c)(4)(A) of the Clean Air Act, EPA's final action preempted inconsistent state control of RVP, except in California. In its final action, EPA noted that states could be exempted from preemption only if EPA finds it is "necessary" to

achieve the NAAQS as provided in section 211(c)(4)(C) of the Act. EPA made specific note of the Massachusetts proposal and the conditions for EPA approval of state RVP regulations.

Description of Today's Action

EPA today approves revisions to the Massachusetts SIP which limit gasoline volatility to 9 psi between June 30 and September 15 in 1989 and between May 1 and September 15 in each year thereafter. The Massachusetts program includes authority for the state to issue waivers to individual suppliers if necessary to avoid supply dislocations. EPA is approving the program as a whole, including any waivers the state might issue under this authority. This aspect of EPA's approval is discussed in full under section 9 of the next portion of this notice describing EPA's response to comments.

EPA is also explicitly finding that the Massachusetts revisions are "necessary to achieve" the NAAQS within the meaning of section 211(c)(4)(C) of the Act. This means that Massachusetts' RVP regulations are not preempted by the federal RVP regulations promulgated on March 22, 1989.

EPA's rationale for this action and its effective date are presented below. In this context many issues raised by commenters on the proposal will be addressed. The remaining comments will be discussed in the next portion of this notice.

In approving the Massachusetts RVP SIP revisions, EPA must consider requirements imposed by two different sections of the Clean Air Act. As with all SIP revisions, section 110 provides the requirements for approval into the SIP. In this case, since EPA has promulgated federal RVP regulations, section 211(c)(4)(A) preempts inconsistent state control. However, section 211(c)(4)(C) provides that the Administrator may except a state RVP control program from preemption if he finds it is "necessary" to achieve the NAAQS. Thus, the Massachusetts revisions must satisfy both section 110 and section 211 requirements to gain approval.

EPA has concluded that the Massachusetts RVP regulations are "necessary" to achieve the ozone NAAQS. In reaching this conclusion EPA has followed the test first articulated in approving the Maricopa County Arizona SIP (53 FR 17413 (May 18, 1988) and 53 FR 30228 (August 10, 1988)) and later presented in the proposed approval of the Massachusetts revisions. EPA stated that if, after accounting for the possible reductions

from all other reasonable control measures, Massachusetts could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). EPA will not interpret that provision to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

As discussed in the notice of proposed rulemaking (NPR), the record indicates that Massachusetts needs VOC emission reductions on the order of at least 28% from 1987 inventory levels to achieve the standard. The state reviewed approximately 30 measures suggested by EPA as reasonable in addition to RVP control to 9 psi and found they could together potentially achieve a 20% reduction from 1987 levels. Enhancements to the state's vehicle inspection and maintenance (I/M) program could produce an additional 2% reduction. As indicated at proposal, while EPA's regulation of gasoline to 10.5 psi reduces the emission reduction attributable to the state regulation, it does not affect the bottom line—a shortfall will still exist. EPA's technical review of the data presented in the state submission and by the commenters affirms the conclusion that a shortfall will exist even with all reasonable state and federal measures.

EPA continues to believe that the fact that the state RVP regulation might not by itself fill the shortfall and hence by itself achieve the standard does not mean the rule is not "necessary to achieve" the NAAQS. It is simple logic that "necessary" is not the same as "sufficient". EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels when no other measures that EPA or the state has found reasonable are available to achieve this reduction. Beyond such identified "reasonable" measures, EPA need look at other measures before RVP control, only if it has clear evidence that RVP control would have greater adverse impacts than those alternatives. EPA has no such evidence here. Therefore, EPA can defer to Massachusetts' apparent view that RVP control is the next less costly (or is itself a reasonable) measure. Thus, EPA concludes that Massachusetts' RVP regulations are "necessary" to achieve the NAAQS.

Summary of Public Comments and EPA's Responses

The major issues discussed in the comments are: (1) what constitutes a finding of "necessary to achieve" the

standard under section 211(c)(4)(C); (2) whether there has been an adequate technical demonstration that controlling RVP to 9 psi is "necessary" (i.e. whether the threshold for exemption from preemption has been crossed); (3) the scope of EPA's discretion assuming a finding that state RVP controls are necessary to achieve the standard; (4) what effect the 9 RVP limit in Massachusetts will have on the cost and supply of gasoline in the state and the Northeast; (5) driveability and safety concerns; (6) whether there is an ozone problem in Massachusetts; (7) whether the state has an adequate enforcement program or sufficient resources to implement the state regulations; (8) whether the state provided "reasonable opportunity" for public comment; (9) what exemptions or waivers from the state regulations should be allowed; (10) the appropriate timing for making the state regulation effective; and (11) whether EPA should withdraw or repropose this action or reopen the public comment period in light of EPA's recent promulgation of federal RVP regulations and other alleged deficiencies in EPA's proposed action. Each issue is explored in detail below.

1. What constitutes a finding of "necessary to achieve" the standard under section 211(c)(4)(C) of the Clean Air Act?

a. Making the "Necessary" Finding Without a Demonstration of Attainment

Comments: One group of comments questioned EPA's ability to make a finding that Massachusetts' RVP regulation is necessary to attain the ozone standard without going through the complete planning process involved in approving a state's response to EPA's finding that the current SIP is substantially inadequate to achieve the standard (the "SIP call"). Several comments stated that EPA cannot approve Massachusetts' RVP regulation as a SIP revision without finding that the SIP as a whole achieves attainment of the NAAQS for ozone. Related comments questioned EPA's ability to determine whether Massachusetts' RVP controls are necessary without a new updated inventory of VOC sources which EPA will require from the states with ozone nonattainment areas as part of their response to the SIP calls. Finally, one comment asked how much time EPA will give states to achieve the ozone standard and how EPA can determine what is necessary to achieve the standard without knowing when the states must achieve attainment.

Response: Through its SIP calls, EPA has imposed on states like Massachusetts an obligation to revise

their ozone SIPs and demonstrate attainment of the standard. The thrust of these comments is that EPA cannot make a finding of necessity without the states' first having gone through the new planning process and developing a new demonstration of attainment. EPA does not interpret section 211(c)(4)(C) to require a complete demonstration of attainment in order to approve a measure which will contribute to attainment.

Forcing a state to demonstrate attainment before allowing it to adopt stricter fuel controls would yield perverse results. Areas with the worst ozone nonattainment problems, which have the most difficulty assembling a demonstration of attainment, would be disabled for perhaps several years from adopting clearly necessary RVP controls stricter than the national controls. One comment noted that Massachusetts so far has not been able to identify any combination of control measures which would bring the Commonwealth into attainment, because the size of the VOC emission reduction necessary is so large. It is precisely in areas like Massachusetts, with an especially difficult nonattainment problem, where the expeditious implementation of new controls, and hence the finding of necessity under section 211(c)(4)(C), is most appropriate.

Beyond that, it is reasonable for EPA to use the best information it now has available to determine whether Massachusetts' RVP program will be necessary to achieve the standard without having to wait for Massachusetts to complete its planning response to the SIP call, including its updated inventory. As explained below, the VOC inventory and reduction figures Massachusetts submitted to EPA were based on reasonably reliable models EPA has used in the past. Such figures are always capable of refinement, but in the Agency's judgment the expenditure of time required to do so is not worth the marginally improved accuracy. See *Vermont Yankee Nuclear Power v. N.R.D.C.*, 435 U.S. 519, 554-555 (1978).

EPA has not yet set a date certain by which Massachusetts must attain the ozone standard. Congress may address the widespread nonattainment problem in the amendments to the Act now being considered. In the meantime EPA has also proposed its own policy for how to deal with SIP planning for nonattainment areas in the post-1987 period. 52 FR 45104 (Nov. 24, 1987). The air quality analysis Massachusetts submitted made it clear that RVP control beyond the federal requirements will be necessary to any attainment

plan, whether the attainment date that Congress or EPA selects is imminent or long-term. Moreover, there is widespread agreement among EPA and the states in the Northeast that major VOC reductions, probably exceeding the 28% estimated by EPA in this case, will be required to get close to attaining the ozone standard. Nothing in the air quality data from the summer of 1988, which have become available in quality-assured form since publication of the proposal, indicates that the reduction requirement projected by the Massachusetts analysis overstates the reduction necessary to achieve the standard. Beyond that, the history of ozone planning over the last decade makes it clear that reduction targets are seldom overestimated.

Furthermore, EPA's approval of this proposal now is consistent with section 110(a)(2)(A) of the Act, which requires attainment "as expeditiously as practicable." Interpreting section 211(c)(4)(C) to require a complete attainment demonstration before EPA can approve (and a state can implement) a fuel control that the state has determined to be practicable and that would advance the attainment date would effectively put section 211(c)(4)(C) in conflict with section 110(a)(2)(A). It is doubtful that Congress intended EPA to choose an interpretation that would create such a conflict.

b. The Standard EPA Has Applied to Determine Whether Fuel Controls Are Necessary Compared with Other Controls

Comments: Several commenters maintained that EPA had not adequately analyzed whether there are other control strategies reasonably available which Massachusetts should implement before resorting to RVP controls inconsistent with the federal regulation. EPA will address these comments in section 2c, below. Other comments concerned the standard that EPA should use to determine whether RVP controls are necessary compared to other controls. Finally, one comment suggested that EPA's approach to comparing alternative control strategies is so vague that it is necessarily arbitrary.

Response: In the proposal for this action, EPA used the approach it first announced when approving the Maricopa County Arizona SIP (53 FR 17413 (May 18, 1988); 53 FR 30228 (August 10, 1988)) to determine whether RVP controls beyond the federal program are necessary to attain the ozone standard in Massachusetts. Under that approach, if after accounting for the

possible reductions from all other reasonable control measures, Massachusetts could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). For the reasons stated in the Arizona action and the Massachusetts proposal, EPA will not interpret section 211(c)(4)(C) to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

One comment suggested that this threshold for a determination of necessity is too strict, and that fuel control may be necessary even where all other reasonable control measures have not been exhausted. The commenter cited *Natural Resources Defense Council, Inc. v. Thomas*, 838 F.2d 1224, 1236-1237 (D.C. Cir. 1988) where the court held that EPA's stack height regulations need not require a source to employ all available methods of control before determining that a stack above good engineering practice height is necessary under section 123 of the Act. This case, however, does not address the question EPA faces under section 211, where EPA must balance the competing interests of a nationally uniform market for and adequate supply of motor fuel and a state's air quality needs. Under section 211 it is appropriate that EPA set a more strict threshold for a finding of necessity to account for Congress' express intent to preempt fuel regulation unless air quality protection requires additional state regulation.

Another comment suggested that EPA could clarify the method by which it determines whether fuel controls are necessary by ranking all possible control measures according to their cost per ton of VOC reduced each year, and approving additional fuel controls only when the state has first exhausted all controls which cost less per ton than fuel controls. EPA and Massachusetts have not developed cost figures for all the alternative controls which the agencies considered before resorting to state fuel controls. Massachusetts has, however, demonstrated to EPA that implementing all the control measures which EPA now believes to be reasonably available to Massachusetts for VOC control (including measures that the state has already adopted and is now beginning to implement) would not achieve compliance with the ozone standard. The roster of control measures Massachusetts examined corresponds to the list of controls EPA has identified for states to implement in response to the

ozone SIP calls, and represents EPA's best judgment as to the controls which could now be reasonably implemented. See EPA's proposed Post-1987 Ozone Policy, 52 FR 45104, Appendix C (Nov. 24, 1987). After examining all controls EPA has determined to be reasonable, a state is free to make its own determination as to what control measures should next be employed.

Moreover, nothing in the language or purposes of section 211(c)(4)(C) suggests that EPA must buttress this judgment as to reasonable controls, a judgment which is based on the state's thoughtful analysis and EPA's expertise regarding alternative measures, with a rigorous cost-effectiveness analysis. In any event, the shortfall in available emission reductions from reasonable measures is so substantial that it is highly unlikely that a rigorous cost-effectiveness comparison would show that there are enough measures whose cost-per-ton-reduced is below that of RVP controls to make such controls unnecessary.

One comment maintained that EPA's method for determining what is necessary is too vague because it would allow EPA to approve state fuel controls "simply because alternative measures are more inconvenient, unpopular, or costly." As discussed in section 2c below, EPA examined reasonable alternative controls which Massachusetts could implement and determined they would not achieve enough reduction to achieve the standard. EPA also has determined that remaining controls such as gas rationing, driving reductions, and source shutdowns are so drastic that the state may resort to fuel controls first. This judgment concerning what is too drastic is a complicated policy determination requiring the Administrator to weigh precisely those factors which the commenter would exclude from his consideration—whether the remaining alternatives are costly or unpopular. In *Amoco Oil Co. v. Environmental Protection Agency*, 501 F.2d 722, 740-741 the court distinguished between the factual foundation which EPA must provide in its administrative decisions and policy judgments which are an integral part of the findings Congress requires the Administrator to make under the Act:

Where by contrast, the regulations turn on choices of policy, on an assessment of risks, or on predictions dealing with matters on the frontiers of scientific knowledge, we will demand adequate reasons and explanations, but not 'findings' of the sort familiar from the world of adjudication.

Id. at 741. EPA's and Massachusetts' analysis of reasonably available

controls is based on a factual record supported by the best analytical tools the agencies had available to them at the time. EPA's judgment that state fuel regulation is a less drastic course than gas rationing and other unpopular controls so far not implemented in any SIP is clearly a matter on the frontier of air pollution control planning, and therefore cannot (and need not) be supported by the same technical record as, for example, EPA's determination that Massachusetts needs at least a 28 percent reduction from its 1987 inventory to attain the standard.

2. Have Massachusetts and EPA made an adequate technical demonstration that controlling RVP to 9.0 psi is "necessary" to attain the NAAQS?

a. Adequacy of Emission Inventory

Comments: Three petroleum industry commenters argue that the emission inventory used in the technical demonstration is inadequate. They point out that EPA has already requested that Massachusetts prepare a new inventory as part of its response to the SIP call. Therefore it is argued that Massachusetts' reliance on the old inventory is inappropriate.

Response: As described in EPA's Technical Support Document, the emission inventory used by Massachusetts and reviewed by EPA is based on EPA's "Compilation of Air Pollutant Emission Factors", known by its document number "AP-42." This document and its updates are EPA's longstanding guidance for determining emissions for inventory purposes and has served as the basis for ozone SIP inventories since the mid-1970s. Mobile source emissions were estimated using the then current version of EPA's mobile source emissions model, MOBILE3, consistent with standard EPA guidance. While EPA has called for many states, including Massachusetts, to update their inventories for post-1987 SIP planning purposes, the Agency has continued to use existing inventories in evaluating current control proposals. EPA expects the new Massachusetts inventory, not due until late 1989, to show higher emissions than the current inventory since it is expected to include more sources and improved quality assurance. Thus, if the current inventory is lacking, it understates current emissions and errs such that the likely percentage reduction needed to attain the standard is also understated.

As stated in the NPR, EPA believes that if there is an error in quantifying the emission reductions resulting from control to 9 psi, those reductions are understated. If the newly released mobile source emission model,

MOBILE4, which includes the effects of running losses, were used, one would expect the reduction in tons of VOCs to increase significantly. Furthermore, contrary to the commenters' belief, the estimated emission reduction is based on reductions achieved during only the four and one-half months each year the regulation is effective. This approach may understate the reduction since 9 psi fuel will be in the distribution system up to two additional months on each end of the regulatory season.

Also contrary to the commenters' claim, EPA's TSD does contain an estimate of the emission reduction achieved by going from EPA's 10.5 psi limit to Massachusetts' 9.0 psi limit. EPA estimated a 2.5% reduction from the 1987 inventory. This estimate does account for nonlinearity in emission reductions with decreasing RVP limits.

There was also some confusion about whether percent reductions were calculated based on the 1987 inventory, as shown in the Federal Register and TSD, or the 1986 inventory, as contained in the state submission. The reference to the 1987 inventory in the EPA documents is correct. EPA made use of the 1987 inventory contained in Massachusetts' 1987 Ozone Reasonable Further Progress (RFP) Report to update the state submission. The calculated tons per year reductions from the various measures identified in the state submission were divided by the total VOC inventory found in the RFP report to obtain the percent reduction from 1987 levels.

b. Appropriateness of the Modeling Demonstration

Comments: While some commenters agreed that modeling was necessary to evaluate the air quality benefit of the RVP reduction, they objected to EPA's reliance on the Regional Oxidant Model (ROM). The commenters also raised concerns about the appropriate hydrocarbon-to-nitrogen-oxides (NOx) ratios to be used in such modeling. A third modeling issue concerns Massachusetts' and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi.

Response: The claim that the ROM does not provide the spatial resolution needed for accurate prediction in individual urban areas loses sight of the fact that we are evaluating a statewide program. The Urban Airshed Model suggested by the commenters is appropriate for large urban areas but would have to be run over at least two different geographic domains to cover the entire state. Caught between the two available model scales, it is EPA's

technical judgment that the ROM is an appropriate tool to use in evaluating future reductions needed for Massachusetts.

EPA understands concern that past strategies have focused almost exclusively on controlling VOCs instead of NOx. As indicated in EPA's post-1987 ozone strategy, future control scenarios are likely to include NOx. However, it is highly unlikely that NOx control alone will suffice. The best technical information available to EPA at this time concerning the Northeast ozone problem points to the need for substantial VOC reductions and at least modest NOx reductions in the future to attain the ozone standard.

The last modeling issue concerned Massachusetts' and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi. While such a modeling exercise would be ideal it is unlikely that one would have much confidence in the outcome of such a sensitivity test. The atmosphere's response to emission reductions of ozone precursors is highly nonlinear such that small increments of reduction may show little or no effect on their own. However, when the reductions from the state's many strategies are aggregated, the total impact becomes quantifiable. Thus, even though Massachusetts and EPA cannot pinpoint where the air quality will improve by what amount on what day, we are confident that there will be a net improvement in ozone levels if Massachusetts were to decrease VOC emissions by 2.5%.

c. Consideration of Other Alternatives

Comments: Commenters expressed concern that Massachusetts and EPA have failed to consider other significant alternative control measures that could lead to attainment. They nominated source categories that included wood furniture coating, drycleaning, and a host of transportation control measures.

Response: EPA believes sufficient alternatives were considered. In the Massachusetts submission EPA found consideration of the emission reduction potential of 28 different point and area source categories, including the wood furniture category mentioned above. These categories correspond to those suggested by EPA in its proposed post-1987 ozone policy [52 FR 45104, Appendix C, November 24, 1987]. Not surprisingly, some of the source categories are not relevant because there are no major sources in those categories in Massachusetts. In most of the relevant categories the potential reductions are a very small portion (less

than 1%) of the existing inventory. Excepting Stage II vapor recovery (regulations for which have already been formally proposed by Massachusetts), architectural coatings and consumer/commercial solvents, these other categories total no more than 4% of the 1987 inventory. As noted in the proposal, reductions from all of these measures produce only about one-half of the reductions needed for attainment.

With respect to transportation control measures, the commenters failed to take account of the fact that the existing Massachusetts SIP contains many of the measures suggested by EPA in its proposed post-1987 ozone strategy. The existing SIP includes incentives for reduction in single-passenger commuter vehicle use (40 CFR 52.1161), regulations for bicycle use (40 CFR 52.1162), and parking management regulations which include one of the only commercial parking freeze programs in the country (40 CFR 52.1134-1135). Since 1982 there has also been an impressive expansion in rapid transit and commuter rail service in the metropolitan Boston area. While EPA recognizes that other transportation measures may be needed in Massachusetts, the remainder are difficult to quantify, yield small reductions individually, and, as evidenced by the public reaction to the EPA-promulgated implementation plans containing such measures in the 1970's (see H.R. Rep. No. 95-294, 95 Cong. 1st Sess., reprinted in 4 Legislative History of the Clean Air Act Amendments of 1977, at 2748-55 (1978)), generally can be expected to have more significant adverse effects on the public as a whole than RVP controls would. To be sure, if there were sufficient evidence for EPA to conclude that the state's RVP controls would result in significantly more severe impacts than other measures that neither EPA nor the state has yet identified as "reasonable" for the state to implement, then it might well be appropriate for the Agency to account for the emission reductions that those other measures would achieve before determining the shortfall against which to judge the RVP controls. The Agency does not believe, however, that the state's RVP control, given the lead-time provided by today's approval, would produce significantly more severe effects than such alternatives (e.g., than a trip reduction ordinance of the type that Arizona found reasonable for application in Phoenix and Tucson).

In sum, Massachusetts and EPA have indeed examined a broad range of potential emission reduction strategies and have still identified a significant

shortfall in the level of emission reductions likely to be needed to achieve the ozone standard.

3. What is the scope of EPA's discretion assuming a finding that state RVP controls are necessary to achieve the standard?

a. Permissible Bases for EPA's Decision to Approve State RVP Controls

Comments: Several comments asserted that even where EPA has determined that state fuel controls are necessary to achieve the standard, EPA may nevertheless disapprove those controls if EPA determines that the economic or fuel supply impacts of the state's regulation are unreasonable. These commenters suggested that EPA may give significant consideration to costs because section 211(c)(4)(C) provides that the Administrator "may" approve a SIP revision imposing state fuel controls once he makes the finding of necessity. Conversely, other commenters maintained that EPA may not disapprove Massachusetts SIP revision based on economic grounds, once EPA has made the finding of necessity.

Response: EPA believes that it must consider cost to some limited extent whenever the Administrator decides whether to make a finding under section 211(c)(4)(C) that a fuel measure is "necessary" for attainment. As discussed above, to determine whether state fuel controls are necessary, EPA must look first at whether other measures that it determines are reasonable (and, perhaps, other measures the state has adopted) will by themselves achieve timely attainment. Arguably, an alternative measure is "reasonable" only if its effects are less drastic than the effects of the fuel controls. Clearly the cost and supply impact of the state fuel controls will be a factor in any such judgment.

EPA does not interpret the use of "may" in section 211(c)(4)(C) to give the Administrator unfettered discretion to disapprove the SIP revision on economic grounds once he has made the finding that state fuel controls are necessary to achieve the standard. Section 211(c)(4)(C) must be read in the context of the preemption created in section 211(c)(4)(A), which prohibits states from adopting inconsistent fuel controls in their SIPs, or anywhere else, for air pollution control purposes. In the face of this prohibition, the sole effect of the "may" in section 211(c)(4)(C) is to authorize the Administrator to overcome a provision (section 211(c)(4)(A)) that would otherwise bar him from approving the SIP revision. The use of "may" in section 211(c)(4)(C) does not

eliminate the obligation that section 110(a)(3)(A) places on the Administrator to approve the SIP revision, provided it meets the requirements of section 110(a)(2). See *Train v. Natural Resources Defense Council, Inc.*, 421 U.S. 60, 98 (1975). Section 110(a)(2) requires the Administrator to approve a SIP revision if, among other things, it may be necessary to insure attainment and maintenance of the standard. Section 110(a)(2)(B). EPA may not consider the economic impact of a necessary SIP revision under section 110(a)(2); under that provision, it is for the state to determine what economic costs are appropriate to achieve the standards. *Union Electric Co. v. E.P.A.*, 427 U.S. 246, 256-258 (1976). Beyond that, it would be incongruous for Congress to give EPA more discretion to reject a SIP revision for reasons unrelated to the goal of achieving the standard as quickly as possible precisely where EPA has determined that a SIP revision is necessary to achieve the standard. Therefore, once EPA makes the finding that state fuel controls are necessary to achieve the standard, a finding which includes a determination that such fuel controls are more reasonable than other available measures, EPA may not reject a state's SIP proposal simply for economic reasons.

One commenter cited *Motor Vehicle Manufacturers Association v. E.P.A.*, 768 F.2d 385, 389-390 (D.C. Cir. 1985), for the proposition that the use of "may" under section 211 commits the decision to the discretion of the Administrator. The *MVMA* court was examining EPA's decision to grant a waiver under section 211(f)(4) of the Act for the use of fuel additives not substantially similar to those in the fuel EPA uses to certify the emissions from automobiles. The court was not examining section 211(c)(4)(C), which allows EPA, upon making a particular finding not mentioned in section 211(f)(4), to act on a SIP revision submitted by a state after full hearing at the state level and subject to the requirements of sections 110(a)(2) and (3)(A).

b. Intent of Federal Preemption Under 211

Comments: Several comments insisted that EPA should disapprove Massachusetts' RVP controls because Congress intended to avoid a patchwork of different state fuel controls in favor of a uniformly regulated national market for fuels. These commenters expressed concern that the exception in section 211(c)(4)(C) to the rule of preemption under section 211(c)(4)(A) would

eventually swallow the rule. Several comments urged EPA not to act inconsistently with its decision not to limit gasoline to 9 psi in 1989 in the federal RVP control program.

On the other hand, several comments urged EPA to support the regional approach to RVP control that the NESCAUM states are undertaking. One commenter pointed out that where Congress has not acted to address the ozone nonattainment problem, it is reasonable to let the states do all they can to attain.

Response: It is clear that section 211(c)(4)(A) indicates that Congress desired to maintain a nationally regulated market for fuels. It is equally clear that section 211(c)(4)(C) indicates Congress recognized that there will be states where the air quality problem is so severe that the interest in a nationally regulated market must bow to the need for additional state controls on fuel content. EPA has not been able to find any legislative history which illuminates with any detail beyond the language of the Act how EPA should strike this balance.

It is reasonable to infer that Congress was aware that the air quality needs of particular states might create varying fuel content requirements, and that Congress accepted that risk in favor of protecting the public health. Several commenters cited *Exxon Corp. v. City of New York*, 548 F.2d 1088 (2d Cir. 1977), as precedent that a uniformly regulated fuel market is the overriding purpose behind section 211(c)(4). The Exxon court, however, was not faced with a claim for an exception to preemption under section 211(c)(4)(C), and specifically left it to EPA to determine whether such an exception is appropriate:

The Act sensibly provides for an exception from its comprehensive preemption of local regulation of motor vehicle fuels only when such regulation is a provision in a state implementation plan approved by the Administrator who has the competence to make the needed professional engineering and energy conservation decisions.

Id. at 1096. Once EPA has made a finding of necessity under section 211(c)(4)(C), it is reasonable for EPA to interpret the Act to place paramount importance on protecting public health and achieving the standard.

EPA believes that the oil industry's concern that the exception will swallow the rule is overstated. As described above, EPA will approve inconsistent state fuel controls only where the state can demonstrate that exhausting all other reasonable alternatives will not achieve the standard, taking costs into account in determining reasonableness.

This demonstration is not a trivial hurdle, and it is highly unlikely that every state with an ozone nonattainment area could make such a showing. Furthermore, a state is unlikely to burden its citizens with the potentially higher cost of lower RVP fuel unless the air quality needs are compelling. Finally, regional initiatives such as NESCAUM's help avoid a wide variety of state controls.

EPA also believes that its decision not to impose a limit of 9 psi by 1989 in EPA's RVP control program does not preclude EPA from approving Massachusetts' SIP proposal. When developing its federal RVP control program, EPA imposed controls across the nation, and had to determine the level of RVP control which supply sources for the entire continental United States could reasonably meet. Further, although EPA was able to make this determination as to particular regions within the country, EPA did not intend to account for the particular air quality needs of each state.

4. What effect will the 9 RVP limit in Massachusetts have on the cost and supply of gasoline?

Comments: Several of the oil company commenters, (API, BP, Mobil, Phillips, APIP) stated that if the 9 psi standard took effect in 1989 the distribution system would be strained and that there could be some significant supply dislocation and cost increases. Seven other commenters were worried about possible supply problems. APIP stated that the petroleum industry would not guarantee that they would be able to meet the 9 psi standard in the Northeast. Several (Mobil, APIP, Phillips) stated that even if refiners had capacity to produce 9 psi gasoline, there would be logistical problems such as the need for additional tankage for storage associated with its distribution. Also, several (Sun, APIP) stated that they could not ensure that imports at 9 psi would be available. Most of the oil company commenters (API, APIP, NPRA, Mobil, Marathon, Sun) stated that there will be some need for capital improvements at refineries to meet the 9 psi standard. Several (API, Mobil, Marathon) stated that there will likely be a cost impact to the Massachusetts 9 standard and eight other commenters stated that they were worried about the increased cost. API stated that the estimates of increased cost do not reflect the extra cost increase that could accompany a significant supply disruption.

Massachusetts cites its two studies as support for the position that supply is not a problem and stated that it continues to believe that the cost will be

a 2 to 3 cents per gallon increase in price.

Response: The potential supply problems arise out of two factors: First, decreasing the volatility of gasoline requires increased refinery capacity. It is certain that implementation of 9 psi volatility in the NESCAUM states will create a refining capacity reduction in the amount of gasoline capable of being produced at each refinery. This is true of both domestic and foreign suppliers. Second, the problem may be further exacerbated by the expected increased demand in gasoline in the summer months.

Various studies have been conducted to determine how much refining capacity will be lost from implementation of 9 psi volatility in the NESCAUM states, how much demand for gasoline is likely to increase in the summer of 1989, and what effect these factors will have on gasoline supply capabilities. The two studies done for NESCAUM and the one done for EPA are inconclusive. There appear to be numerous factors which make precise prediction of these effects impossible. However, under the EPA Study (Sobotka study), estimates indicate that the volatility standard may be feasible without serious supply problems.

The Sobotka study cites the Department of Energy (DOE) as predicting that demand for gasoline should increase only in the range of 1 to 1.5 percent this summer. This estimate is also supported by other studies including one reported at a National Petroleum Refiners Association conference. The study also estimates that approximately a 5 percent refining capacity shortfall will occur at domestic refineries because of the NESCAUM volatility laws. The study estimates that with a 1.2 percent increase in demand for gasoline in the summer, U.S. refineries would be able to make up for a 5 percent domestic shortfall, and a 10 percent import shortfall, without construction of new facilities or installation of additional equipment. Although various factors make it impossible to accurately predict the refining shortfall of imported gasoline, there is no strong evidence indicating that it will exceed 10 percent. Thus, the Sobotka study suggests that it is likely that the resulting refinery capacity shortfalls from a 9 standard in 1989 should not result in supply shortfalls. In the unlikely even of unforeseen supply disruptions, the State of Massachusetts has assured EPA that it has the authority to take immediate steps to provide needed waivers or exceptions to the program. The State has committed to

carefully monitor the supply situation this year and take appropriate action, as may be necessary, to ensure that supply problems do not occur as a result of its state RVP control program. See also the response to section 9 later in this notice for more discussion of state waivers or exceptions.

5. What effect will 9 RVP gasoline have on driveability in cold weather and vehicle safety?

Comments: Seven commenters from Vermont and Maine expressed concern that gasoline from Massachusetts having an RVP of 9 would be shipped into their states and cause starting and driveability problems in the spring and fall. They were also concerned that the approval of the Massachusetts SIP would lead to approval of 9 RVP fuel in all New England states. Three commenters representing petroleum interests expressed concern that the 9 RVP fuel would cause hard starting, hesitation, and stalling in the early spring and late fall. Gasoline will have to enter the distribution system in March and will not be out until October in order to comply with the regulation. Temperatures can be at or near freezing during this time of year. One commenter stated that cars that are poorly tuned and have weak batteries are more susceptible to low RVP fuel problems. They also stated that California should not be used for comparison because they have a shorter supply time since its fuel comes from refineries within the state. Three commenters supported the use of 9 RVP fuel, claiming that driveability is not a problem because the weather in northern California is similar to the weather in New England.

They also referred to the Motor Vehicle Manufacturers Association statement on the New Jersey RVP regulations, dated August 18, 1988, which stated that 9 RVP fuel would cause no driveability problems. Another commenter representing a group of automobile manufacturers indicated there should be no adverse effect from the use of 9 RVP fuel.

Two commenters stated that although fuel used now is safe because the vapors are too rich in hydrocarbons to be ignited, the reduction to 9 RVP fuel will make the vapors potentially explosive below 15 degrees Fahrenheit. Another commenter's report showed that reduction of RVP to 9 reduced fires and problems of overpressurization, vapor lock, fuel spurting, and fuel foaming.

Response: We believe that the nature of the gasoline distribution system makes it very unlikely that 9 RVP fuel will be available to consumers in March or early April, even if the blending-down

process by that time has begun to reduce RVP. Continued availability of low-RVP fuel is even less likely by late October because the blending-up period will occur rapidly at the close of the control period. Nevertheless, the experience of California, which has required 9 RVP fuel for many years, appears to demonstrate that widespread driveability or fuel safety problems will not occur in New England. We know of no evidence of extensive problems in California, despite significant operation at cool temperatures and high elevations.

As further evidence of this conclusion, one can compare the true vapor pressure (TVP) experienced in fuel tanks at different times during the year. For example, when corrected for elevation, gasoline in Billings, Montana at its January 1988 average RVP of 13.6 and at the historic low January temperature of -30 degrees Fahrenheit would result in a true vapor pressure of 1.0 psi.

Similarly, for Boston, the analogous RVP and temperature of 10.0 RVP and -12 degrees would also result in a TVP of 1.0. In contrast, 8.5 RVP fuel at an analogous Boston April temperature of 18 degrees would result in a TVP of 1.8 psi, 80 percent higher than the winter figure. We conclude from this that if low-volatility fuel were to reach consumers during very low temperature weather, any degradation in driveability or fuel safety would be no greater (and would likely be less) than that experienced currently during the winter.

Conversely, low volatility fuel should improve vehicle driveability in very hot weather by reducing the occurrence of such conditions as vapor lock and fuel foaming.

6. Is there really a severe ozone problem in Massachusetts or the Northeast?

Comments: A number of industry commenters, in urging EPA to disapprove the SIP revision, claimed that the air is really becoming cleaner and cleaner over time and that the ozone standard is being met more than 99% of the year. Environmental groups countered these claims with data from 1987 and 1988 which show a worsening of the ozone problem since 1986. They noted that 1988 was one of the worst ozone seasons on record across the Northeast.

Response: EPA is firmly convinced that there is a serious ozone problem in the Northeast. EPA's conviction was evidenced by last year's SIP calls to Massachusetts and most other Northeast states. This SIP call was based on 1985-1987 ozone monitoring data which ranked southern New England among the worst ozone

nonattainment areas in the country. EPA's concern is further heightened by the 1988 ozone season. The ozone standard was exceeded more frequently, at more sites, and at higher levels in 1988 than in 1987. In fact, as one commenter noted, a 1988 EPA Region I study comparing public health risk from environmental problems in New England ranked ozone in the highest risk category ("Unfinished Business in New England: A Comparative Assessment of Environmental Problems", December 1988).

7. Has Massachusetts demonstrated that it has an adequate enforcement program or adequate resources to implement the RVP regulation, as required by section 110 of the Clean Air Act?

Comments: API correctly notes that section 110 of the Act requires that the state provide a program for enforcement of the emission limitations as well as necessary assurances that it has adequate resources to implement the plan. API notes that Massachusetts intends to enforce its program through sampling at terminals, bulk plants and other primary distribution points but not at retailers. They point out that EPA's RVP enforcement program covers these points and also reaches all the way to retailers and claim that this establishes a minimum standard for effective enforcement of RVP limits that Massachusetts fails to meet. They further claim that Massachusetts' stated intention to assign five additional personnel to implement the RVP program is inadequate.

Response: EPA does not agree with API's enforcement concerns. EPA's decision to extend its RVP enforcement program down to the retail level reflects concern that nationally there may be the opportunity to increase the RVP of gasoline that has already left the refinery or bulk terminal by blending the gasoline with a higher RVP fuel before it reaches the retailer. This is a reasonable concern for the national RVP program, which allows for three different RVP fuels, depending on defined geographic areas. Opportunities to blend the differing RVP gasoline en route to the retailer to yield a noncomplying fuel would exist. EPA concluded in its national rulemaking that testing at all points in the distribution system would provide the "best safeguard" against distribution of noncompliant gasoline and would result in the "greatest likelihood" of achieving environmental results. However, EPA did not conclude that its program represented a minimum standard or that anything short of this

enforcement scheme would be inadequate under section 110(a)(2).

EPA does not believe the Massachusetts enforcement program must mirror the federal program. First, if Massachusetts successfully ensures that all the gasoline in bulk plants and terminals within the state are below 9 psi, the opportunities for RVP enhancement within the state will be small. Retail distributors would have to truck higher RVP gasoline into Massachusetts and splash blend the gasoline to accomplish this, an unlikely scenario. Second, retail outlets in Massachusetts will be subject to EPA's national enforcement program. If gasoline that does not comply with Massachusetts' 9 limit is found at retailers in the state by EPA, we will surely share such evidence with the state. Thus, while the EPA and Massachusetts RVP enforcement programs do not match, they do have significant overlap, provide for some inspection of retailers, and contain sufficient flexibility to adequately provide enforcement of the regulation. Moreover, EPA notes that in the comparable arena of enforcement through Delayed Compliance Orders (DCOs), courts have held that EPA may not second guess the state's choice of enforcement mechanisms so long as the chosen system is a reasonable one. *Bethlehem Steel Corp. v. U.S. EPA.*, 638 F.2d 994, 1005-1006 (7th Cir. 1980); appealed, *Bethlehem Steel v. Gorsuch*, 726 F.2d 356 (7th Cir. 1984), reh. den., en banc, vacated on reh., 732 F.2d 97 (7th Cir. 1984), withdrawn and appealed, 742 F.2d 1028 (7th Cir. 1984).

EPA disagrees with API's concerns that Massachusetts' resource commitment is insufficient to enforce the RVP regulations. The state submittal clearly indicates that five additional persons will be assigned to implement the RVP program. Given that Massachusetts will be testing only at the primary distribution level and will be relying to some extent on examination of distributor records, EPA believes that Massachusetts' commitment of five additional persons will be sufficient to provide assurance of adequate personnel to carry out the RVP program as required by section 110(a)(2)(F). EPA doubts that it could commit any more of its federal resources to enforce the national program in Massachusetts in the absence of the state program. Moreover, even if the Massachusetts rule's enforcement scheme were inadequate to support a finding, ultimately, that the states' eventually complete ozone SIP update meets all of the requirements in section 110(a)(2),

EPA could still approve the rule under section 110(a)(3). That is because, even with an inadequate enforcement program, the rule would still strengthen the pre-existing SIP and hence, under the rationale in *Michigan v. Thomas*, 805 F.2d 176, 186 (6th Cir. 1986), be approvable for that limited purpose.

8. Has Massachusetts satisfied the Act's public notice and hearing requirements?

Comments: API claims that EPA failed to address the question of whether the Massachusetts SIP revision was adopted after "reasonable notice and public hearing." While acknowledging that public hearings were held, they allege that the decision to limit RVP to 9 psi was actually made by NESCAUM some time before public hearings on the Massachusetts RVP regulation, and that therefore any hearing nominally provided was substantively inadequate. On the other hand, NESCAUM commented that ozone pollution problems, especially in the Northeast, are clearly regional problems and must therefore be dealt with through consistent regulations.

API also questions whether notice and hearing was provided on the SIP revision or just a state regulation. They believe it was unclear from the public notices and materials available before the hearing that the RVP rule was actually intended to be submitted as a revision to the SIP. Finally, API questions whether 40 CFR 51.104(d), which requires certain SIP revisions to be submitted to EPA within 60 days after their adoption, is applicable to this revision. They claim the Massachusetts revision was not submitted until over 80 days after the RVP rule was adopted.

Response: As to the first claim, EPA's Federal Register notice actually provides the dates of the hearings and the TSD contains an itemization of the dates the public notices were published, including an identification of the newspaper the notice was published in. Although there is no summary statement that the public participation requirements for hearing and notice were met, the record does speak to that effect.

EPA finds API's concerns that the public hearings were largely meaningless and thus not "reasonable" to be misplaced. API infers, from selected quotations, that Massachusetts and the other NESCAUM states had predetermined the outcome of the hearings before and without regard to the hearings held in January 1988. EPA is not at all convinced that the process was predetermined. If API were aggrieved on this matter we would have

expected it to challenge the state's proceedings under state law, as API has in fact done in New York. However, no party challenged Massachusetts' proceedings, including API, who was a participant.

EPA acknowledges that Massachusetts did initiate rulemaking on RVP control pursuant to an agreement with the other northeast states. However, having initiated the rulemaking on that basis, the state then proceeded to promulgate the regulations through its full administrative process, giving adequate notice and opportunity for public hearing on the proposed regulations.

As a policy matter EPA agrees that the ozone problem in the Northeast is a problem of regional magnitude and has held several meetings with top EPA and State environmental officials in EPA Regions I, II, and III to determine what concerted efforts the States could take on their own to deal with issues of regional, but not necessarily national scope. Therefore EPA believes that it is appropriate for the northeastern states to regulate ozone precursors in a consistent fashion. However, each state must provide for adequate public participation in the promulgation of individual regulations, including assessing and responding to all submitted comments, as Massachusetts has done in connection with its RVP regulations. As discussed more fully below, EPA reviewed Massachusetts' public participation procedure and determined that the state provided adequate opportunity for public input in connection with development of the RVP rule.

API argues specifically that Massachusetts' hearing procedure was not adequate to comply with section 110 of the Act or EPA's hearing regulations at 40 CFR 51.102. The operative language in both the statute and the regulation is "reasonable notice and public hearing." API asserts that Massachusetts had predetermined its final decision on RVP regulation and thus the hearing provided was not reasonable.

However, EPA interprets the language of both the statute and the implementing regulations as requiring the state to provide, first, reasonable notice of a public hearing, and second, an opportunity for public hearing. EPA does not believe that the law requires the Agency to review the hearing record and determine whether the hearing provided was itself "reasonable."

EPA's interpretation of the hearing requirement is clearly reflected in the regulations at 40 CFR 51.102. The regulations go into substantial detail on

the manner in which states must provide notice of a hearing in order for that notice to be considered reasonable. See 40 CFR 51.102(d); see also 40 CFR 51.102(g)(2). However, the regulations make absolutely no mention of specific requirements for conduct of public hearings. The state need only certify that it in fact held a public hearing, which Massachusetts clearly did, and need not provide any detailed information on the conduct of the hearing.

This is appropriate because the reasonableness of public notice can be assessed objectively by reviewing the amount and variety of notice methods used. Assessing the reasonableness of a hearing on the other hand would be a highly subjective determination done retrospectively that would unnecessarily infringe on the state's discretion in conducting its hearings. Of course, if EPA received concrete evidence that the hearing did not provide adequate opportunity for public participation, it could find that the hearing did not meet the intent of EPA's regulation. EPA has, however, received no such evidence.

API further claims that a state must specifically identify a proposed regulation as a future SIP revision prior to scheduling a public hearing on the regulation. However, neither the statute nor EPA's regulations contain any such explicit requirement. The purpose of a public hearing is to receive public input on the substance of proposed regulations, not on whether the state may or may not submit the regulations as a SIP revision. For years EPA has approved SIP revisions with no analysis of whether the state had publicly announced its intent to eventually submit a proposed regulation as a SIP revision at the state public hearing stage.

Generally it should be totally irrelevant to public commenters whether a regulation with which they will be required to comply as a matter of state law might also become an aspect of federal law. At the time Massachusetts held its public hearing on the RVP rule, prior to federal preemption, commenters should similarly have had no concern as to whether the proposed state rule would eventually become federal law as well. Only where a state regulation would otherwise be preempted by existing federal law and therefore unenforceable would the public have a need to know that the state intended to seek federal approval of the regulation for purposes of preemption waiver in preparing comments at the state hearing level. This was not the case at the time of the state hearing on Massachusetts'

RVP rule. Moreover, given EPA's then outstanding proposal to regulate RVP and thus preempt state RVP regulation, it should have been apparent to commenters at the time of the public hearing that Massachusetts would submit the rule as a SIP revision to insure enforceability in the event of EPA final RVP regulation and preemption.

API's concern that the Massachusetts revision was not submitted within 60 days of adoption is also misplaced. The RVP regulation was published in the Massachusetts Register on May 13, 1988 and became effective on the same day. The Massachusetts SIP revision was submitted to EPA on July 8, 1988, 56 days later. Thus the requirement at 40 CFR 51.104(d) was satisfied.

9. Should waivers or exemptions from the state regulations be granted to suppliers who cannot provide 9 RVP gasoline, and for alcohol blends of gasoline?

Comments: Two commenters (BP Oil and Sun) are concerned with potential inequities resulting from supplier-specific requests for waivers. They feel that the use of supplier-specific waiver provisions could diminish the calculated benefits of the rule by allowing higher RVP gasoline into the system, and financially disadvantage those companies which are able to comply. They feel that the use of waivers and exemptions introduces uncertainties about whether the volatility regulations will be applied fairly and equitably to all gasoline suppliers, whether in reference to supplier-specific exemptions or to exemptions for alcohol fuels, because Massachusetts' regulation does not include explicit provisions for DEQE to follow in considering applications for waivers or exemptions from individual suppliers.

With specific regard to alcohol fuel exemptions, one commenter sees the inconsistency between Massachusetts' and EPA's volatility programs as "counterproductive." DEQE's regulation would permit the production and sale of fuels of any RVP level when produced through alcohol blending upstream of the point of sale or supply from a terminal or bulk plant. The commenter believes that such waivers are counterproductive because, for example, ethanol blending increases volatility and therefore evaporative emissions increase. The commenter notes that in EPA's Notice of Proposed Rulemaking for a national RVP regulation (52 FR 31293, August 19, 1987), EPA concluded that gasoline usage results in a greater contribution to ozone formation than the gasoline which it replaces.

The commenters conclude that if waivers or exemptions are to be used, they must apply to all suppliers and significant penalties should be attached. In addition, one commenter noted that EPA has to consider how it will respond to supplier-specific waiver requests (in reviewing requests to the state for waivers); and EPA "is urged to adopt a policy on waivers which is consistent with its own RVP regulatory program."

Response: EPA is aware that Massachusetts intends to grant waivers to individual suppliers if necessary to avoid serious supply dislocations during the initial stages of its RVP program. Although EPA did not focus on this aspect of the program in its notice of proposed rulemaking, commenters were also aware of Massachusetts' intentions and the issue was fully aired in the public comments. EPA is approving the Massachusetts RVP program as a whole, which includes the ability of the state to issue waivers as appropriate. EPA is in essence pre-approving any waivers that Massachusetts might grant as part of the overall RVP program being approved into the Massachusetts SIP today. Massachusetts will not be required to submit each waiver to EPA as a SIP revision at this stage before it may take effect.

EPA is currently able to pre-approve any waivers that Massachusetts may grant because the RVP program is a discretionary program that Massachusetts has submitted to generate additional emission reductions and move the state closer to attainment of the ozone NAAQS. EPA is not pre-approving waivers from a federally required program or a program to which EPA has already assigned specific emission reduction credits as part of an overall attainment demonstration. EPA could not pre-approve waivers in such situations because they would constitute SIP relaxations. Here, whatever emission reductions Massachusetts obtains from the RVP program, even after any waivers have been granted, will tighten the existing SIP and improve air quality.

EPA notes that its pre-approval of any waivers Massachusetts may grant under the RVP program differs dramatically from approval of a generic permitting program such as a new source review or bubble program. In those cases, EPA authorizes states to approve relaxations of SIP requirements provided that the state follows approved procedures calculated to insure that all such waivers are accounted for in the SIP attainment demonstration and are issued using replicable evaluation techniques. Here, since EPA is not

currently relying on the Massachusetts RVP program for any defined emission reduction credit toward an approved attainment demonstration, EPA need not now analyze the criteria by which Massachusetts will issue any waivers. Massachusetts is free to issue waivers on the basis of its own state criteria, consistent with any requirements of its state administrative procedures act.

When Massachusetts does submit its completed post-1987 attainment demonstration, EPA will assign specific emission reduction credits to the RVP program, taking account of any supplier specific waivers Massachusetts may have issued by that time. Once EPA has approved Massachusetts' post-1987 SIP, it will take whatever rulemaking action is necessary to ensure that any further waivers under the RVP program, which at that point, would be considered SIP relaxations, would have to be submitted to EPA for approval as individual SIP revisions.

Finally, EPA notes that any suppliers who receive waivers from Massachusetts must still comply with the federal RVP limit of 10.5 psi.

In its fuel volatility regulation, Massachusetts excludes blends of gasoline containing 10% or more simple alcohol because: (1) Alcohol blends represent a small fraction of its fuels market; (2) such an exclusion would avoid any impediments to the development of alternative fuels; and (3) any controls put on alcohol blends would be handled under the state's alternative fuels program. Those alcohol blends are not, however, excluded from complying with the requirements for alcohol blends of gasoline set forth by EPA in its Federal Register Notice on March 22, 1989 (54 FR 11868) limiting the RVP of gasoline during the summer months to 10.5 psi (beginning 1989). The federal rule requires that methanol blends meet the same RVP requirements of gasoline and that ethanol blends meet a RVP not more than 1 psi above the allowable RVP for gasoline. Thus there will be no loss in emission reductions relative to the federal program, which is the only alternative to the Massachusetts program. EPA has not authority to disapprove the state's rule just because the additional "necessary" emission reductions that it would achieve are not as large as those that might be achieved through a rule tailored differently. Furthermore, as detailed in the Addendum to the Technical Support Document for this action, EPA believes concerns about alcohol blends in New England may be of little practical importance because field testing of gasoline by EPA

throughout the summer of 1988 found virtually no alcohol in gasoline.

10. How soon after the date of final approval of the Massachusetts revisions should the RVP relationships be made effective?

Comments: Of 35 commenters on EPA's proposal, 19 commented on the timing of EPA's final action. Those favoring EPA approval of the SIP revision generally favored EPA acting quickly to make the regulations effective by their May 1 starting date or as close to that as possible. These commenters note that the Colonial Pipeline, which supplies 20% of the Northeast's gasoline has been shipping 9 RVP fuel to the Northeast since March 1, 1989. They also pointed out that those suppliers who have made a good faith effort to comply with the May 1st date would be at a competitive disadvantage relative to those with cheaper, higher, volatility gasoline if the date is extended.

Those opposing EPA approval of the SIP revision generally asked that if we did approve it we must provide the petroleum industry with realistic and sufficient lead-time to enable 9 psi gasoline to be distributed throughout the distribution system. These commenters cited EPA's allowing 70 and 100 days for the recently promulgated national regulations to become effective at the terminal and retail level respectively as precedent for such a decision. A third path, suggested by API, would be for EPA to make its final approval conditional on the state's deferral of the compliance date for its regulation.

Response: The timing issue is one of the most difficult ones posed by this action. Since EPA has had control of the timing of both the final federal RVP action and the decision on the Massachusetts RVP revision it is important that we insure that both the federal and state programs start with a maximum likelihood of success and a minimum possibility of supply disruption.

EPA must consider several issues in deciding when to make the rule effective. The first issue is when did the industry have notice that it would have to supply a 9 psi gasoline to Massachusetts. Since the Massachusetts rule was passed in 1988, the industry was on notice since then of the state's intention to control RVP to 9 psi. However, the Massachusetts rule was preempted on March 22, 1989 by the promulgation of the federal volatility requirements.

Another issue to consider is the lead-time that would be necessary to enable 9 psi gasoline to get through the distribution system. The record

indicates that the industry thought that it would take from 60 to 70 days to achieve compliance at the terminals in Massachusetts. The record also indicates that the Colonial Pipeline, which supplies at least 20% of the gasoline in the Northeast, has been shipping 9 psi gasoline since March 1, 1989.

The final issue involves the air quality consequences of delaying the effective date. EPA should not delay action on a SIP revision in such a manner as would thwart the state's intent in requesting the SIP revision. Massachusetts' submission of the RVP SIP revision last July was clearly aimed at getting its regulatory program in place for the 1989 ozone season. Thus, it is important to have the effective date as early as possible in order to maximize the air quality benefits of the program in 1989.

In deciding to make this action effective on June 30, 1989, EPA has attempted to balance these competing interests. In establishing that date EPA has decided to give considerable weight to the industry's estimate of the need for a 60-70 day lead-time. This will both minimize possible difficulties the industry might encounter with a shorter lead-time and provide citizens in the Northeast as much relief as is practical during most of the 1989 ozone season. Although some suppliers may have made a good faith effort to comply with the May 1 effective date specified in the Massachusetts proposal, they were under no obligation to do so once EPA preempted the Massachusetts requirement by promulgating Federal RVP controls on March 22, 1989. The Agency cannot, therefore, select an earlier effective date for all suppliers based on the voluntary action of a few, especially considering that the time between the March 22 federal rulemaking and today's publication is critical to the refiner/supplier planning and implementation process regarding fuel delivery for the coming summer. This amount of lead-time is also appropriate in Massachusetts since this is the first state volatility program EPA has approved.

11. Should EPA reopen the comment period or withdraw and repropose this SIP revision in light of EPA's final action on the national RVP regulation and other alleged defects in the February proposal?

Comments: EPA received divergent comments on the appropriate process for and timing of a final action on Massachusetts' SIP revision. The Massachusetts Attorney General's office argued that EPA should take final action as soon as possible since, in its opinion,

section 110(a)(3) of the Clean Air Act requires EPA to take final action on a SIP revision within four months of submittal. On the other hand, the American Petroleum Institute (API) felt that because of numerous allegedly unresolved issues raised in their substantive comments EPA should at a minimum repropose action on the revision to deal with these issues before proceeding to final action.

Response: EPA concludes that given its interpretation of the relevant law and the seasonal nature of Massachusetts' revision, the Agency should proceed expeditiously to final action based on the record currently before it. EPA does not read section 110(a)(3) to require the agency to take final action on a SIP revision within four months, or any other specific time period. Although section 110(a)(2) does require the Administrator to take final action on initial SIP submittals within four months of submission after EPA's promulgation or revision of NAAQS, Congress did not include any explicit time period for EPA action on SIP revisions in section 110(a)(3). EPA believes therefore that the agency should generally proceed to final action on SIP revisions in a timely manner consistent with developing adequate support for agency actions.

EPA is unpersuaded by API's claim that circumstances have so changed since the proposed approval of the Massachusetts revision that we should reopen the comment period or withdraw and repropose this action. EPA's proposed **Federal Register** notice for the Massachusetts RVP program explicitly discussed the possibility that EPA would take final action on the national RVP program prior to final action on the Massachusetts program. EPA clearly presented the path EPA proposed to follow and the conclusions we proposed to reach in the event that the federal RVP regulations were finally promulgated. Furthermore, in the final **Federal Register** notice on the national RVP program, EPA explicitly discussed the Massachusetts proposal.

In this case EPA concludes that it is not necessary to issue a reproposal prior to taking final action. EPA believes that it has adequately responded to all of the substantive comments raised by commenters in the substantive discussions presented above. Obviously, additional analysis on such technical issues could always be conducted. However, administrative agencies generally have the discretion to determine when issues have been aired sufficiently and to close the record and proceed to final action, consistent of course with the need to act in a

reasoned, non-arbitrary fashion. *Vermont Yankee Nuclear Power v. N.R.D.C.*, 435 U.S. 519, 554-555 (1978).

Further, EPA should not delay action on a SIP revision in such a manner that would thwart the state's intent in requesting the SIP revision. In this case, Massachusetts has submitted a seasonal requirement that since currently preempted must be approved in a timely fashion in order to effectuate the state's intent that the regulation provide emission reduction benefits in the upcoming summer ozone season. Therefore, EPA should make best efforts to act on the information available to it now to the extent that it is adequate or else the agency would thwart the state's intent with regard to the 1989 ozone season. Since EPA has concluded that the existing record is sufficient, EPA can proceed to final action at this time based on that record.

Enforcement

In EPA's proposal we indicated that there was a problem with the test method section, 310 CMR 7.02(12)(e)(2)(b). The regulation allowed alternative test methods " * * * approved by the Department." EPA stated that such methods must also be approved by EPA or else the alternative methods must be eliminated. EPA's proposal was made with the understanding that this defect would be cured prior to final EPA action.

On April 12, 1989, Massachusetts submitted its revision to 310 CMR 7.02(12)(e)(2)(b). The revision adds the words "and EPA" to the end of the relevant sentence. EPA finds that its prior concerns were addressed in exactly the manner EPA had suggested at proposal and that the test methods section is approvable as revised since it is now fully enforceable and approvable.

Final Action

EPA is approving this revision to the Massachusetts Ozone State Implementation Plan to control gasoline volatility, including any waivers Massachusetts may grant under the program. EPA has also made the finding that the Massachusetts SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401-7642.

EPA is today approving the Massachusetts SIP revision pertaining to its state gasoline volatility program.

Date: April 21, 1989.

William K. Reilly,
Administrator.

For the reasons set forth in the preamble, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart W—Massachusetts

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1120 is revised by adding paragraph (c)(78) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(78) Revisions to federally approved regulation 310 CMR 7.02(12) submitted on July 13, 1988, September 15, 1988, and April 12, 1989, by the Department of Environmental Quality Engineering, limiting the volatility of gasoline from May 1 through September 15, beginning 1989 and continuing every year thereafter, including any waivers to such limitations that Massachusetts may grant. In 1989, the control period will begin on June 30.

(i) Incorporation by reference:

(A) Massachusetts Regulation 310 CMR 7.02(12)(e), entitled, "gasoline Reid Vapor Pressure (RVP)," and amendments to 310 CMR 7.00, "Definitions," effective in the Commonwealth of Massachusetts on May 11, 1988.

(B) Massachusetts Emergency Regulation Amendment to 310 CMR 7.02(12)(e) 2.b entitled "gasoline Reid Vapor Pressure" effective in the Commonwealth of Massachusetts on April 11, 1989, with excerpt from the Manual for Promulgating Regulations, Office of the Secretary of State.

3. The table in § 52.1167 is amended by adding a new entry to "310 CMR 7.00" and adding "310 CMR 7.02(12)(e)" to read as follows:

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

| State citation | Title/subject | Date submitted by State | Date approved by EPA | FEDERAL REGISTER citation | 52.1120(c) | Comments/Unapproved sections |
|---------------------|---------------------|------------------------------------|---------------------------|------------------------------------|------------|---|
| 310 CMR 7.00 | Definitions | 07/18/88 | [Date of Publication].... | [FR citation from published date]. | 78 | Includes bulk plant and terminal, gasoline market. |
| 310 CMR 7.02(12)(e) | Gasoline Volatility | 07/18/88, 09/15/88, 04/12/89 | [Date of Publication].... | [FR citation from published date]. | 78 | Approves a limitation on volatility of gasoline from June 30 for Sept. 15, 1989, and May 1 to Sept. 15 in subsequent years. |

[FR Doc. 89-10470 Filed 5-3-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3565-8]

New York; Final Authorization of State Hazardous Waste Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: New York has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New York's application and has made a decision, subject to public review and comment, that New York's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New York's hazardous waste program revisions. New York's application for program revision is available for public review and comment.

DATES: Final authorization for New York shall be effective July 3, 1989 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on New York's program revision application must be received by the close of business June 5, 1989.

ADDRESSES: Copies of New York's program revision application are available 8:00 a.m.-4:30 p.m. at the following addresses for inspection and copying: New York State Department of Environmental Conservation, 50 Wolf Road, Room 204, Albany, New York 12233-0001; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone 202/382-5926; U.S. EPA Region II Library, Room 402, 26 Federal Plaza, New York, New York 10278, Phone 212/264-2881.

Written comment should be sent to Mr. Conrad Simon, Director, Air and Waste Management Division, U.S. EPA, Region II, 26 Federal Plaza, Room 1011, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT:

Ms. Elizabeth E. Hamilton, Hazardous Waste Programs Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 2343, New York, New York 10278, 212/264-0548.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising this option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6929(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Part 260-266, 124 and 270.

B. New York

New York initially received final authorization on May 29, 1986. On September 10, 1988, New York submitted

a program revision application for additional program approvals. Today, New York is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In order to obtain Final Authorization, the State of New York has demonstrated and certified that its authority to regulate the following is equivalent to the federal requirements of RCRA.

| Provisions | Federal citation | State analogue |
|---|--|--|
| Chlorinated Aliphatic hydrocarbons listing. | RCRA § 3001(b); 40 CFR 261.31. | ECL § 27-0903; 6 NYCRR 371.4(b). |
| Warfarin and Zinc Phosphide. | RCRA § 3001(b); 40 CFR 261.33(e) and (f). | ECL § 27-0903; 6 NYCRR 371.4(d) (5) and (6). |
| Lime stabilized pickle liquor sludge. | RCRA § 3001; 40 CFR 261.3(c)(2). | ECL § 27-0903; 6 NYCRR 371.1 |
| Household waste. | RCRA § 3001; 40 CFR 261.4(b)(1). | ECL § 27-0900; § 27-0903; 6 NYCRR 371.1(e)(2)(i). |
| Corrections to test methods manuals. | RCRA § 2002 and § 3001; 40 CFR 260.11(a), 260.21 and 270.6(a). | ECL § 27-0903; 6 NYCRR 370.1(e) and 370.3(b). |
| Redefinition of solid waste. | RCRA § 3001, § 3004; 40 CFR 260.10, 260.30, 260.31, 260.32. | ECL § 27-0903; 6 NYCRR 370, 371, 373 and 374. |
| Satellite accumulation. | RCRA § 2002, § 3002, § 3004, § 3005; 40 CFR 262.34(c). | ECL § 27-0703, § 27-0907, § 27-0911; 6 NYCRR 372.2(a)(8)(i). |
| Applicability of interim status standards. | RCRA § 3004; 40 CFR 265.1. | ECL § 27-0703(i) § 27-0707 & § 27-0911; 6 NYCRR 373.3 |
| National uniform manifest. | RCRA § 3002; 40 CFR 260 and 262. | ECL § 27-0905 and § 27-0907(5); 6 NYCRR 370.2(b). |

| Provisions | Federal citation | State analogue |
|--|---|---|
| Biennial Report... | RCRA § 3002, § 3004; 40 CFR 122, 262, 264, 265 and 270. | ECL § 27-0703, § 27-0707, § 27-0907 and § 27-0911; 6 NYCRR 372 & 373. |
| Event of noncompliance. | RCRA § 3005(c). | ECL § 27-0703, § 27-0911 and § 27-0913. |
| Interim status standards for TSDF's. | RCRA § 3005(c); 40 CFR 262 and 265. | ECL § 27-0703, § 27-0707 and § 27-0911; 6 NYCRR 372.2(c)(i), and 27-0911. |
| Closure, post-closure and financial responsibility requirements. | RCRA § 3004, § 3005; 40 CFR 260, 264, 265 and 270. | ECL § 27-0703, § 27-0911, § 27-0917 and § 27-0918; 6 NYCRR 370 and 373. |
| Permit rules: Settlement agreement. | RCRA § 3005; 40 CFR 270.70(b). | ECL § 27-0703(i), § 27-0707 and § 27-0911; 6 NYCRR 373-1.3. |
| State availability of information. | RCRA § 3006(f); 40 CFR 271.17(c). | POL § 87, § 89; 6 NYCRR 370.1(b), 372.1(g), 373-1.1(c). |

EPA has reviewed New York's application, and has made an immediate final decision that New York's hazardous waste program revision satisfied all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to New York for the additional program modifications. The public may submit written comments on EPA's immediate final decision up until June 5, 1989. Copies of New York's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of New York's program revision shall become effective 60 days after the date of publication of this notice unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirm that the immediate final decision takes effect or reverses the decision.

New York's program revision covers the following federal provisions:

Non-HSWA Requirements

- Biennial Report (48 FR 3977, January 28, 1983).
- Permit Rules—Settlement Agreement (48 FR 39622, September 1, 1983).
- Interim Status Standards Applicability (48 FR 52718, November 22, 1983).
- Chlorinated Aliphatic Hydrocarbon Listing (49 FR 5313, February 10, 1984).
- National Uniform Manifest (49 FR 10490, March 20, 1984).
- Permit Rules—Settlement Agreement (49 FR 17716, April 24, 1984).
- Listing Warfarin & Zinc Phosphide (49 FR 19922, May 10, 1984).
- Lime Stabilized Pickle Liquor Sludge (49 FR 23284, June 5, 1984).

Non-HSWA Cluster I

- Household Waste (49 FR 44980, November 8, 1984).
- Interim Status Standards—Applicability (49 FR 46095, November 21, 1984).
- Corrections to Test Methods Manual (49 FR 47391, December 4, 1984).
- Satellite Accumulation (49 FR 49571, December 20, 1984).
- Redefinition of Solid Waste¹ (50 FR 614, January 4, 1985).
- Interim Status Standards for TSDF's (50 FR 16044, April 23, 1985).
- State Availability of Information 3006(f), November 8, 1984.

Non-HSWA Cluster II

- Closure, Post-Closure and Financial Responsibility Requirements (51 FR 16422, May 2, 1986).

New York is not authorized nor are they seeking to be authorized to operate the Federal Program on Indian Lands. This authorization shall remain with EPA.

C. Decision

I conclude that New York's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New York is granted final authorization to operate its hazardous waste program as revised. New York now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. New York also has primary enforcement responsibilities for the program revision

¹ New York is not seeking authorization for EPA regulations pertaining to: Rulemaking petitions since this is an optional requirement

provisions, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New York's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 27

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 24, 1989.

William J. Muszynski
Acting Regional Administrator
[FR Doc. 89-10576 Filed 5-3-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90111-9110]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 9

(amendment) to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978 (FMP). The amendment (1) replaces the long-term spawning escapement goal and rebuilding schedule for Klamath River fall chinook salmon with fixed annual spawning escapement and harvest rates and a minimum escapement floor for naturally spawning adults; (2) modifies the ocean harvest allocation of coho and chinook salmon between non-Indian commercial and recreational fisheries north of Cape Falcon, Oregon; (3) revises coastwide notice procedures for inseason management actions; (4) conforms Federal and state regulations regarding the incidental harvest of steelhead by recreational fishermen; (5) authorizes inseason reporting requirements for commercial fishermen to provide timely accounting of catches from any regulatory area subject to quota management; and (6) removes the limitations on commercial and recreational season beginning and ending dates. The amendment is intended to update the FMP to reflect current conditions in the fishery and prevent overfishing while achieving, on a continuing basis, the optimum yield.

EFFECTIVE DATE: May 1, 1989, except for the regulations at 50 CFR 661.4(b) and 661.20(a)(1)(iii) and Appendix section II.B.12, which will not be effective until the office of Management of Budget (OMB) approves the collection-of-information requirement (subject to the requirements of the Paperwork Reduction Act) which these sections contain. After OMB's approval is received, a supplemental final rule will be published in the *Federal Register* announcing the OMB control number and the effective date for these specifically designated sections.

ADDRESS: Copies of the amendment, including the environmental assessment and the regulatory impact review/regulatory flexibility analysis, are available from the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201-5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140, Rodney R. McInnis (Southwest Region, NMFS), 213-514-6199, or Lawrence D. Six (Pacific Fishery Management Council), 503-221-6352.

SUPPLEMENTARY INFORMATION:

Background

Under the Magnuson Fishery Conservation and Management Act

(Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on March 2, 1978. Since then, the FMP has been amended nine times, with implementing regulations codified at 50 CFR Part 661. A "framework amendment" to the FMP (framework FMP) was approved by the Secretary in 1984 and established an annual regulatory process setting each fishing season's management measures.

The major purposes of Amendment 9 are to (1) replace the longterm spawning escapement goal and rebuilding schedule for Klamath River fall chinook with fixed annual spawning escapement and harvest rates that will allow a fixed percentage from each brood of natural spawners to escape the fisheries and spawn, subject to a minimum escapement floor for naturally spawning adults; (2) modify the ocean harvest allocation of coho and chinook between non-Indian commercial and recreational fisheries north of Cape Falcon, Oregon; (3) revise the coastwide notice procedures for inseason management actions; (4) conform Federal and State regulations regarding the incidental harvest of steelhead by recreational fishermen; (5) authorize inseason reporting requirements for commercial fishermen to provide timely accounting of catches from any regulatory area subject to quota management; and (6) remove the limitations on commercial and recreational season beginning and ending dates.

A notice of availability of Amendment 9 for public review and comment was filed with the Office of the Federal Register on December 27, 1988; was published in the *Federal Register* at 54 FR 49 on January 3, 1989; and was followed by a 60-day public comment period as provided under the Magnuson Act. Proposed regulations to implement five of the six amendment issues were filed with the *Federal Register* on January 17, 1989; were published at 54 FR 2177 on January 19, 1989; and were followed by a 45-day public comment period ending on March 3, 1989. The remaining amendment issue, inseason reporting requirements, contains a collection-of-information requirement subject to the Paperwork Reduction Act and to OMB review and approval. Proposed regulations for this issue were published separately at 54 FR 11976 on March 23, 1989, with a 15-day public comment period. The preambles to the two proposed rules discussed the rationale for the proposed amendments.

The Secretary approved all measures of Amendment 9 on March 14, 1989. This final rule consolidates the implementing

regulations for all six amendment issues, although the inseason radio reporting requirements authorized by the amendment are not effective until such time as OMB approves the collection-of-information requirement and a supplemental final rule is published in the *Federal Register* announcing the OMB control number and the effective date for these specific regulations.

Comments received during the public comment periods are summarized and responded to below.

Amendment Issue 1—Klamath River Fall Chinook Escapement Goal

Comment 1: Productivity of these stocks has increased in the past three years, leading to considerable uncertainty among technical staff of the Klamath Fishery Management Council as to what an appropriate escapement goal should be.

Response: The amendment is designed to determine the optimum carrying capacity of the Klamath River Basin and hence the optimum spawning escapement goal for fall chinook. It links spawning escapement to stock productivity such that, as stock abundance increases, escapement will be allowed to increase proportionately, and as stock abundance decreases, escapement will decrease proportionately, subject to a minimum level below which escapement will not be allowed to fall in order to protect the stock's productivity. Under the amendment, a range of actual annual spawning escapements should result from which better information on productivity of the Klamath River Basin will be obtained. It will take a number of years of assessing different levels of spawning escapement and the resulting stock production to determine the optimum spawning escapement goal that may be expressed as a fixed escapement level or a fixed escapement rate.

Theoretically, when optimum escapement is being achieved, the highest level of sustainable biological yield also can be achieved because the optimum number of juvenile salmon for the productive capacity of the watershed will be produced. The survival of the maximum number of juveniles that contribute to harvests will depend on many uncontrollable environmental factors affecting their life cycles. Over time, the amendment is expected to provide information that will allow production of maximum sustainable yield (MSY) from the resource.

Comment 2: The fixed 35 percent spawning escapement rate for Klamath

River fall chinook stocks leaves the Council with almost no flexibility to adjust this rate as changing conditions warrant. Only the Council's Salmon Technical Team (STT) can approve a change in the spawning escapement and harvest rate percentages. The Council is unable to change the spawning escapement rate for social and economic reasons.

Response: The Council is free to initiate either of two kinds of actions to modify the 35 percent spawning escapement rate for Klamath chinook without the STT's concurrence. Although the Council's STT need not necessarily agree with the information on which such a modification is based, the change must be based on the best scientific information available. Such a change could be implemented either by an amendment to the FMP under 16 U.S.C. 1852(h)(1) or, if circumstances justify, by emergency action of the Secretary pursuant to 16 U.S.C. 1855(e).

In addition to this procedure, the Council can initiate a change in the 35 percent spawning escapement rate during the process of establishing annual management measures, but only if the STT concurs in the change. By imposing upon itself the requirement for STT concurrence before the spawning escapement rate can be changed without FMP amendment or emergency action, the Council has not delegated to the STT either its authority or responsibility to determine optimum yield (OY). Rather, the Council has decided that, absent some indication from the STT that the spawning escapement rate is not based on the best biological information available, the current spawning escapement rate should remain intact unless changed by amendment to the FMP or by emergency action by the Secretary.

The record indicates that the Council believed that the modification of the spawning escapement rate would be a rarity, realizing that in years of high abundance some additional economic benefits to the ocean fisheries could not be enjoyed. By the same token, under the spawning escapement rate approach, when abundance is down, the ocean fishery does not suffer as much as if escapement were expressed in terms of immutable numbers of fish. This was considered an appropriate downside risk which all user groups were aware was necessary to test the carrying capacity of the Klamath River over time. The Council was concerned that, if the escapement rate were allowed to change annually, for reasons other than technical adjustments by the STT, only because abundance was estimated to be

above or below the previous year, the long-term productive capacity of the river might never be known.

Amendment Issue 2—Harvest Allocation of Non-Indian Fisheries North of Cape Falcon, Oregon

Almost all of the approximately 190 letters received addressed this issue, of which about 10 supported the revised allocation, and about 170 supported the status quo. (These numbers overstate the actual number of respondents because many of them submitted multiple letters.) This issue was also the subject of 35 petitions containing about 470 signatures in support of the revised allocation, and 118 petitions containing about 940 signatures in support of the status quo.

Many of the respondents opposed this portion of the amendment, suggesting it violates National Standards 4 or 5 of the Magnuson Act, in whole or in part. Comments directed to National Standards 4 and 5 will be addressed separately, followed by other comments.

National Standard 4

National Standard 4 states that "Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be: (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." Public comments on the National Standard 4 issue and responses are categorized below.

(1) Discrimination Between Residents of Different States

Comment 3: The reallocation of coho and chinook from the commercial to the recreational fishery discriminates between residents of different states.

Response: Disagree. Access to the commercial or recreational allocation of coho or chinook in the United States exclusive economic zone (EEZ) in the area north of Cape Falcon is open to anyone with a valid commercial or recreational fishing license, issuance of which by the States of Washington and Oregon does not depend on state of residency.

(2) Fairness and Equity

Comment 4: The condition of the fishery has not changed sufficiently to warrant a departure from the framework allocation schedule.

Response: The Council chose to restructure the allocation schedule to address problems created partially by the current allocation schedule and partially by very low stock abundances. In recent years, the ratios of coho and chinook allocated to each fishery have resulted in incompletely harvested quotas because of difficulty in structuring fishing seasons to harvest allowable allocations of both species. Numerous inseason regulatory changes were necessary to utilize quotas more fully, resulting in confusion among fishermen and decreased participation in the fishery. Recreational seasons have been very short, which has been detrimental to local community businesses dependent on attracting recreational fishermen from many different geographic areas. Modification of the allocation schedule will help ameliorate these problems and represents the Council's view as to what harvests will result in optimum yield from the resource.

Comment 5: Under the amendment, significant reallocation of coho to the recreational fishery occurs at all levels of coho allowable harvest. There is no attempt to increase the troll allocation of chinook to equalize this reallocation of coho. Because the amendment deviates from the status quo, it is not fair or equitable to commercial salmon trollers who suffer a net loss in benefits.

Response: Disagree. The guidelines for National Standard 4 at 50 CFR 602.14(c)(3)(i)(B) provide that "An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as 'fair and equitable,' if a restructuring of fishing privileges would maximize overall benefits."

The guidelines for National Standard 4 at 50 CFR 602.14(c)(3)(i)(A) state that "An allocation of fishing privileges should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective." A principal objective of the framework FMP is to manage and regulate the fisheries so that the OY encompasses the quantity and value of food produced, the recreational value, and the social and economic values of the fisheries.

The Council concluded that the current allocation schedule does not adequately optimize the recreational value or the social and economic values of the fisheries consistent with the concept of OY. Specific allocation objectives for both commercial and

recreational fisheries were adopted by the Council in the belief that fishing regimes based on these objectives will better achieve OY from the fishery.

The revised allocation schedule, specifically adopted fishery allocation priorities, and the measure providing flexibility to deviate from the allocation schedule are intended by the Council to guide it in establishing annual fishing regimes that will more fully utilize the available quotas and better distribute social and economic benefits among commercial and recreational fishermen (i.e., by stabilizing and lengthening recreational seasons and maximizing the value of the commercial catch).

Comment 6: The wording accompanying the revised allocation schedule is generalized and provides no protection for the troll industry. The Council would be allowed to reallocate most if not all of the commercial coho allocation to the recreational fishery and provide few if any chinook in exchange.

Response: Disagree. The criteria described below limit the ability of the Council to initiate preseason species trades that would be unacceptably disadvantageous to either the recreational or commercial fisheries. Preseason species trades, and any deviations from the exchange ratio of 4 coho to 1 chinook, can only be made if they: (1) Are based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon, (2) simultaneously benefit both the commercial and recreational fisheries or benefit one fishery without harming the other, and (3) are supported by a socioeconomic analysis that compares the impacts of the recommendation to those of the standard allocation schedule to determine the allocation that best meets the allocation objectives. Therefore, the Council is prevented from initiating reallocations or exchange ratio modifications that would be unacceptably disadvantageous to the commercial trollers. These criteria serve to protect the trollers from any perceived abuse of discretion by the Council.

Comment 7: The amendment would allow the Council to shift the all-species troll fishery south of Leadbetter Point, Washington, or even south of the Columbia River, which would be unfair to fishermen north of Leadbetter Point and possibly discriminate against Washington fishermen.

Response: The Regional Director received clarification from the Council on the provision for geographic deviation from the allocation percentages between the two major

subareas (from the U.S.-Canada border to Leadbetter Point, and from Leadbetter Point to Cape Falcon). The Council recognizes that geographic deviations in excess of 50 percent of the allocation that would have been established in the absence of the transfer have equity implications and are to be used rarely. Deviations of more than 50 percent may be made only if there is a conservation need to protect the weak stocks and the deviation will provide larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation. This clarifying language also has been incorporated into the final implementing regulations.

Further, this provision does not discriminate between citizens of different States. If the all-species troll fishery were shifted south of Leadbetter Point or south of the Columbia River, participation in the fishery off Oregon is open to citizens of other states.

Comment 8: The economic analysis contained a comparison of changes in income impacts by user groups due to the amended allocation schedule. Out of 63 combinations of coho and chinook harvest levels tested, there were 58 negative combinations for commercial and 0 negative combinations for recreational. This is not fair or equitable to trollers.

Response: An economic model was used to project the benefits and costs of the revised allocation schedule relative to the status quo. The economic analyses demonstrated that the commercial fishery incurs mostly negative impacts in net economic value (NEV) and local community income as a result of the amended allocation schedule when compared to the status quo. However, the recreational fishery incurs offsetting positive impacts in NEV and local community income for most levels of total allowable harvest that are likely to occur in the next few years. Overall benefits are maximized by providing net positive impacts in NEV and local community income.

Comment 9: The Council has broken the laws governing it that guarantee user groups parity in allocation issues.

Response: Allocation guidelines for National Standard 4 do not guarantee parity to each user group. The Council's recommendation to revise the allocation schedule to benefit the recreational fishery will better achieve OY, further the objectives of the framework FMP, maximize overall social and economic benefits, and still meet the fairness and equity criteria under National Standard 4.

Comment 10: In Washington State, less than 15 percent of the citizens are

salmon sport fishermen. The revised allocation will deprive the remaining 85 percent of their only access to Washington ocean-caught salmon, which is from commercial ocean fishermen.

Response: Disagree. Commercially caught salmon from the ocean off Washington will continue to be available because the commercial allocation is only being slightly reduced, not eliminated. The commercial share of coho salmon is reduced only between 6 and 14 percent, while the commercial share of chinook salmon ranges between a reduction of 4 percent and an increase of 2 percent depending upon the abundance of each species. Commercially caught salmon are also available from ocean fisheries off Oregon, California, and southeast Alaska.

Comment 11: Ocean sport fishermen have ample opportunity to take what one would consider a fair amount of salmon for an individual, including the opportunity to fish in inside waters such as the Columbia River mouth, Strait of Juan de Fuca, Puget Sound, and streams.

Response: Agree. However, numerous commercial salmon fishing opportunities also exist in inside waters. Also, commercial fishermen harvest salmon species not generally available to recreational fishermen in ocean waters (i.e., chum, sockeye, and pink salmon).

(3) Avoidance of Excessive Shares

Comment 12: The revised allocation scheme will promote severe hardship on commercial fishermen in years of low abundance and may eliminate the commercial troll fishery and give the entire resource to the recreational fishery.

Response: The guidelines for National Standard 4 at 50 CFR 602.14(c)(3)(iii) imply that an allocation scheme is consistent with this part of the standard if it does not result in a monopoly of benefits from the fishery by any particular entity or group. The commercial share of coho salmon is reduced from a range of 31 to 69 percent under the current allocation schedule to a range of 25 to about 55 percent (the percent increases as the coho abundance increases) under the revised allocation schedule. Likewise, the commercial share of chinook salmon changes from a range of 54 to 63 percent to a range of 50 to about 65 percent. Therefore, both user groups will continue to harvest significant shares of the resource, and no one group will be achieving what could be considered a monopoly. The revised allocation scheme does not result in allocation of

an excessive share of the resource to a single user group.

National Standard 5

Comment 13: The imbalance in economic changes indicates that fishery resources are being distributed among fishermen on the basis of economic factors alone, in violation of National Standard 5.

Response: The amendment has multiple purposes. A major purpose for the revised allocation scheme is to provide allocations to both commercial and recreational fishermen that can be fully harvested, to the extent possible, without leaving quantities of either fishery's quotas unharvested. Other purposes include better achievement of OY by more fully utilizing available quotas, reducing the inseason regulatory burden and its resulting confusion to fishermen, providing longer and more stable recreational fisheries for the social as well as economic benefit of coastal communities, and maximizing the value of the commercial catch.

Other Comments

Comment 14: The revised allocation is not fair because it departs from the allocation schedule in the framework FMP that the Secretary agreed to adopt in a 1984 stipulation for dismissal of a pending court case brought by the Washington Trollers Association (WTA). This stipulation will be violated if the current allocation schedule is revised without WTA agreement and submission to the Court for approval.

Response: The 1984 stipulation did not and could not obligate the Secretary to maintain the current allocation schedule and could not deprive the Council from its statutory responsibility to prepare, from time to time, such amendments to the FMP as are necessary. The Secretary has the duty to take action on such amendments.

Comment 15: The draft amendment contained language on flexibility to deviate from the allocation schedule that was agreed to by the user groups and included in both alternatives to the status quo. At its November 1988 meeting, the Council adopted a new alternative that contained flexibility language not included in the draft amendment. The final amendment fails to mention that this wording was changed by the Council and provides no discussion of the potential impacts of these changes. Agency compliance with the National Environmental Policy Act (NEPA) requires the issuance of a second draft amendment and, if these flexibility provisions are included as an alternative in this second draft, the upgrading of the environmental

assessment (EA) to a supplemental environmental impact statement (SEIS).

Response: The final amendment contained flexibility language that was similar to and was based upon the draft amendment. It was modified by the Council based on public comment and discussion. The final amendment, while incorporating the revised flexibility language without mention of the specific changes in the wording, does analyze the impacts of the Council-adopted alternative. Even with the inclusion of the revised flexibility provisions, the final EA concludes that no new significant impacts will result relative to those described in the SEIS prepared for the framework FMP. Therefore, an EA, and not an SEIS, is the appropriate NEPA document for this action. NEPA does not require the issuance of a second draft amendment.

Comment 16: The final EA contains a false and misleading analysis of the impacts that was not contained in the draft EA distributed for public review and comment.

Response: The final EA contains an analysis well within the scope of impacts examined in the draft EA. A notice of availability of the amendment and its incorporated EA was published in the *Federal Register* at 54 FR 49 (January 3, 1989). Public comments were considered by the Assistant Administrator for Fisheries, NOAA, in his determination that, based on the EA, the amendment will not have a significant effect on the human environment and that a finding of no significant impact (FONSI) is appropriate. This determination had the concurrence of the Director, Ecology and Environmental Conservation Office, NOAA. Therefore, the EA and FONSI are the final environmental documents required by NEPA.

Comment 17: The final framework amendment dated October 1984 does not adequately address the environmental impacts of complete elimination of the salmon troll fishery north of Cape Falcon, which might be accomplished under the flexibility provisions to deviate from the allocation schedule adopted by the Council at its November 1988 meeting.

Response: The flexibility language adopted by the Council cannot be used to eliminate the salmon troll fishery north of Cape Falcon. Therefore, the SEIS for the framework amendment and the EA for the amendment adequately address the environmental impacts of the revised allocation scheme.

Comment 18: The amendment states that recent total allowable ocean harvest quotas have been consistently below those anticipated. A detailed

analysis of the reasons for the low harvest quotas is required since environmental documents are supposed to be analytical. This analysis must also include the past history of the Council's performance in monitoring the division between Indian and non-Indian fishermen.

Response: The amendment specifically lists numerous reasons for the reduced non-Indian ocean salmon fisheries north of Cape Falcon, including the constraints imposed by legal obligations for treaty Indian allocation requirements and by inside/outside sharing. In addition, the Council annually produces a comprehensive review of the coastwide ocean salmon fisheries, which specifically discusses trends in stock assessments and management concerns. This report is distributed to the public in February of every year.

The Council and Secretary are responsible for managing the ocean fisheries only. They have no jurisdiction over non-ocean fisheries or the actions of other management entities such as the States of Washington and Oregon and the treaty Indian tribes. Ocean quotas are designed to achieve appropriate Court-ordered and/or negotiated treaty/non-treaty allocations. Details concerning regulation of non-ocean fisheries usually are not available during the Council's preseason process of adopting management measures because they have not yet been agreed upon by the State of Washington and the treaty Indian tribes. Consequently, it is not possible for the Council to predict nonocean treaty/non-treaty sharing in advance of the fishing seasons.

The Council has received from the Washington Department of Fisheries, and made available to the public, a post-season accounting of treaty/non-treaty sharing of certain key coastal coho salmon stocks for 1985 and 1986.

Comment 19: It is not true for the 1988 season that the current allocation schedule resulted in extremely short recreational seasons. In 1988 the entire total allowable commercial ocean catch of coho was traded by the commercial fishermen to the recreational fishery; a large portion of the chinook allocated to the recreational fishery remained unharvested at the end of the season because achievement of coho quotas closed the recreational fishery before the chinook quota could be caught. Analysis should also include several past seasons and a discussion and comparison of the status quo schedule and the revised schedule.

Response: The 1988 allocation north of Cape Falcon was based on an

agreement between representatives of both commercial and recreational user groups to trade the 34,000 commercial coho allocated by the framework schedule for 8,500 recreational chinook. Recreational representatives agreed to the species trades because the increased share of coho (and any reallocated chinook not harvested by the commercial fishery) would extend the recreational season. This agreement was implemented by emergency regulation, not under the allocation schedule in the FMP. When it was apparent that a considerable amount of the recreational chinook quota would remain unharvested, it was too late in the season for the commercial fishery to take advantage of this chinook without unacceptable impacts on coho. It is not always possible to predict the harvest ratio for the two species.

Table 3 of the amendment shows that the season length for the recreational fishery in 1988 was 33 days, compared with the 1976-1980 average of 153 days and a range of 37 to 107 days between 1981 and 1987. It is very likely that in the absence of the trades, the recreational season would have been even shorter. Table 3 also provides annual data on season length beginning in 1981.

Comment 20: Four negative signs were omitted in the draft amendment and could have misled reviewers to conclude there were no negative impacts associated with the non-status quo alternatives.

Response: In those instances where negative signs were inadvertently omitted from the discussion of the range of socioeconomic impacts, the text immediately following clearly stated negative impacts were found when the two alternatives were compared with the status quo. Also, references were made to tables that contained the correct negative values.

Comment 21: The amendment is false when it states that the present framework FMP's allocation schedule has not adequately served the commercial and recreational fisheries. The amendment is also false when it states that the failure of the present allocation schedule has resulted in failure to fully attain OY. There have been no problems with the allocation schedule; the real problem has been the lack of realistic quotas and the flexibility to transfer fish. To obtain OY in the 1988 season, less chinook should have been allocated to the recreational harvest. The revised allocation schedule, however, allocates even more chinook to the recreational fishery.

Response: NOAA agrees that recent allowable harvest levels of coho and chinook have been consistently below

those anticipated at the time the allocation schedule in the framework FMP was proposed and implemented. These levels are not expected to change significantly in the near future. However, the current allocation schedule has mandated the structuring of fishing seasons that are not the most beneficial for either the commercial or recreational fisheries. Short commercial all-species seasons make it difficult not only to predict the harvest potential of the commercial fleet and, thus, manage to a quota without exceeding it, but also to maximize the value of the catch. Recreational seasons also have been very short, which has been detrimental to local community businesses dependent on fishing activities. In response to these problems, the Council recommended revising the allocation schedule.

Although the recreational chinook quota in 1988 was not completely harvested, a larger recreational chinook allocation was built into the revised allocation schedule to allow for increased recreational fishing opportunities through a chinook-only recreational fishery in years of low allowable coho harvest. Incorporating this provision into the schedule, instead of depending on preseason species trades, provides additional assurance to local communities for the base seasons that can be expected.

Comment 22: The amendment states that a portion of the loss to the commercial sector by the transfer of fish to the recreational fishery is offset by the ability and practice of some commercial fishermen to move to other fishing areas. This statement is incomplete because: (1) It does not identify the other fishing areas and how many Washington trollers have licenses in these other areas or the availability and cost of these licenses, and (2) no mention is made that recreational fishing vessels also have the ability to move to other fishing areas and participate in tuna, bottomfish, and whale watching trips.

Response: Appendix Table B-2 of the amendment contains data on interstate troller activity for 1985, which shows that, of the vessels that participated in the Washington fishery, 12 percent also participated in Oregon and/or California. The availability and cost of state commercial fishing licenses are determined by the states. Appendix B mentions that many of the recreational charter vessels operating in the ocean also operate in the Columbia River. However, local communities that depend on recreational fishing as an economic base are unable to move.

Changes to Proposed Regulations

This final rule makes the following changes to the proposed regulations found at 54 FR 2183, January 19, 1989. Items (1) through (4) are technical corrections or clarifications. Items (5) through (7) respond to the Council's February 27, 1989, letter which clarifies major aspects of Amendment Issue 2 (harvest allocation north of Cape Falcon).

(1) Add a technical correction at § 661.2 to remove a reference to the Magnuson Act as being defined below because the technical amendment published at 53 FR 24644 on June 29, 1988, removed the definition of Magnuson Act from Part 661 and placed it in a new Part 620.

(2) Delete § 661.5(a)(16) because the provision prohibiting fishermen from fishing without first listening to the telephone hotline or the U.S. Coast Guard broadcast is unenforceable. Fishermen are advised in Appendix section II.B.11 to monitor the hotline or broadcast to receive actual notice of inseason actions.

(3) Revise § 661.23(a)(2) and Appendix sections II.B.11 and III.B.2(c) to clarify that inseason actions will be filed with the **Federal Register** as soon as practicable, and not as soon as practicable following the action. When practicable, inseason actions will be filed before the action becomes effective. In § 661.23(c)(2), add the parenthetical "(telephone hotline and U.S. Coast Guard broadcasts)" after "actual notice of the action."

(4) Revise Appendix section II.B.2(a)(i) subparagraph (A) to clarify that the allocation schedule for the area north of Cape Falcon applies to allowable non-treaty ocean harvest. Revise Appendix section II.B.2(a)(i) subparagraph (B) to read "The initial allocation may be modified annually in accordance with paragraphs (iii) through (v) of this section."

(5) Redesignate Appendix section II.B.2(a)(iii) as section II.B.2(a)(v), and clarify the use of the fishery allocation priorities to structure seasons as follows. The fishery allocation priorities will provide guidance in the preseason process of establishing final harvest allocations and structuring seasons that best achieve the allocation objectives. To the extent fish are provided to each fishery by the allocation schedule, these priorities do not favor one user group over the other and should be met simultaneously for each fishery. Seasons may be structured that deviate from these priorities consistent with the allocation objectives.

(6) Redesignate Appendix section II.B.2(a)(iv) as section II.B.2(a)(iii), and clarify the preseason and inseason flexibility for deviation from the allocation schedule as follows. Deviations are to better achieve the allocation objectives and the fishery allocation priorities. Preseason trades may be made if they: (1) are based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon; (2) simultaneously benefit both the commercial and recreational fisheries or benefit one fishery without harming the other; and (3) are supported by a socioeconomic analysis that compares the impacts of the recommendation to those of the standard allocation schedule to determine the allocation that best meets the allocation objectives. Preseason trades will use the exchange ratio of four coho to one chinook as a desirable guideline. Inseason trades or transfers may vary from the guideline ratio to meet the allocation objectives. Deviations in geographic distribution of the allocation percentages that exceed 50 percent of the allocation that would have been established in the absence of the transfer may be made if there is a conservation need to protect the weak stocks and the deviation will provide a larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation.

(7) Add a new Appendix section II.B.2(a)(iv) to incorporate the allocation objectives that were included in the amendment but omitted from the proposed regulations.

Classification

The Regional Director determined that the amendment is necessary for the conservation and management of the ocean salmon fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared a final environmental impact statement for the FMP and concluded that there will be no significant adverse impact on the human environment. The Council prepared an environmental assessment for this amendment. Based on this assessment, the Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. The environmental assessment is part of the amendment and may be obtained from the Council at the address listed above.

The Under Secretary of Oceans and Atmosphere has determined that this rule is not a "major rule" requiring a regulatory impact analysis under

Executive Order 12291. This determination was based on analysis of the regulatory impact review (RIR) prepared for this rule. This rule has a significant economic impact on a substantial number of small businesses for purposes of the Regulatory Flexibility Act, and thus required an initial regulatory flexibility analysis (IRFA). The RIR/IRFA is part of the amendment and may be obtained from the Council at the address listed above. A summary of the RIR/IRFA was published at 54 FR 2182, January 19, 1989. Based on comments, no changes were made in the initial RIR/IRFA; therefore, the document is now a final RIR/RFA.

The Assistant Administrator for Fisheries has determined that this rule must be effective no later than May 1, 1989, at which time commercial and recreational ocean salmon fisheries off the coasts of Washington, Oregon, and California are scheduled to open in accordance with the annual management measures. These management measures are based on the provisions of this rule. Therefore, it is impractical and contrary to the public interest to delay for 30 days the effective date of this final rule, and the agency finds good cause to waive the delayed effectiveness provision (5 U.S.C. 553(d)(3)) of the Administrative Procedure Act.

This rule contains, but does not put into effect a collection of information requirement for purposes of the Paperwork Reduction Act (PRA) which was proposed at 55 FR 11976. A request to collect this information has been submitted to the Office of Management and Budget for approval as provided by section 3504(h) of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission. This determination was submitted to the responsible state agencies and the San Francisco Bay Commission for review under section 307 of the Coastal Zone Management Act. All agencies either agreed with this determination or failed to comment within the statutory time period for comment.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.
Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1989.

James E. Douglas Jr.,
Deputy Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR Part 661 is amended as follows:

PART 661—[AMENDED]

1. The authority citation for 50 CFR Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 661.2 [Amended]

2. In § 661.2, in the definition for *Fishery management area*, in paragraph (d), the comma is replaced by a period and the phrase "defined below." is removed.

3. In § 661.4, in paragraph (a), in the second sentence, the words "Except as provided in paragraph (b) of this section," are added at the beginning, and the word "No" is revised to read "no"; paragraph (b) is redesignated as (c); and a new paragraph (b) is added to read as follows:

§ 661.4 Reporting requirements.

(b) Persons engaged in commercial fishing may be required to submit catch reports that are specified annually under § 661.20.

4. In § 661.5, paragraph (a)(8) is revised to read as follows:

§ 661.5 Prohibitions.

(a) * * *

(8) Take and retain, possess, or land any steelhead (*Salmo gairdneri*) taken in the course of commercial fishing within the fishery management area, unless such take and retention qualifies as treaty Indian fishing as that term is defined in this Subpart A of this part.

5. In § 661.20, in paragraph (a), in the introductory text, in the second sentence, the words "and selective fisheries" are revised to read "selective fisheries, and inseason notice procedures"; new paragraphs (a)(1)(iii) and (a)(5) are added to read as follows:

§ 661.20 Annual actions.

(a) * * *

(1) * * *

(iii) Reporting requirements.

(5) *Inseason notice procedures.* Telephone hotlines and U.S. Coast Guard broadcasts.

§ 661.21 [Amended]

6. In § 661.21, in paragraph (a)(1), the words "by publishing a notice in the **Federal Register**" are revised to read "by notice issued"; in paragraph (a)(2), the words "by publication of a notice in the **Federal Register**" are revised to read "by notice issued"; and in paragraph (a)(3), the words "by publication of a notice in the **Federal Register**" are revised to read "by notice issued".

§ 661.22 [Amended]

7. In § 661.22(a) and in the Appendix, in section II.A., in section II.B.2. paragraph (b)(iii), in section III.A.2. paragraph (b), and in section III.A.3., the words "Salmon Plan Development Team" are revised to read "Salmon Technical Team".

8. In § 661.23, paragraph (d) is removed, paragraphs (e) and (f) are redesignated (d) and (e), and paragraphs (a) through (c) are revised to read as follows:

§ 661.23 Notice procedures.

(a) *Notification.* (1) Annual and certain other actions taken under §§ 661.20 and 661.22 will be by notice filed with the **Federal Register**.

(2) Inseason actions taken under § 661.21 will be by notice available from telephone hotlines and U.S. Coast Guard broadcasts as specified annually under § 661.20(a). Inseason actions will also be filed with the **Federal Register** as soon as practicable.

(b) If time allows, the Secretary will invite public comment prior to the effective date of any notice filed with the **Federal Register**. If the Secretary determines, for good cause, that a notice must be filed without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the filing of the notice with the **Federal Register**.

(c) *Effective dates.* (1) Notice of annual and certain other actions taken under §§ 661.20 and 661.22 will be filed with the **Federal Register** and will be effective upon filing, unless a later time is specified in the notice.

(2) Notice of inseason actions taken under § 661.21 will be effective from the time specified in the actual notice of the action (telephone hotline and U.S. Coast Guard broadcasts), or at the time the notice filed with the **Federal Register** is effective, whichever comes first.

(3) Any notice issued under this section will remain in effect until the

expiration date stated in the notice or until rescinded, modified, or superseded. However, no notice of an inseason action has any effect beyond the end of the calendar year in which it is issued.

9. In the Appendix, in section II.B.1., in paragraph (c), in the second sentence, the words "desired level of escapement for a four-year ocean management period" are revised to read "established escapement goal".

10. In the Appendix, in section II.B.1., in paragraph (d), the sixth sentence ("The maximum season length off the Oregon coast will be May 1 through October 31.") is removed, and the words "during the period September 15 through October 31" in the last sentence are removed.

11. In the Appendix, in section II.B.2., paragraphs (a)(i) through (iv) are revised and a new paragraph (a)(v) is added to read as follows:

Appendix

II. Annual Changes to Management Specifications

B. Procedures for Establishing and Adjusting Annual Management Measures.

2. Allocation of ocean harvest levels.

(a) (i) Allocation schedule. (A) Initial allocation of coho and chinook salmon north of Cape Falcon, Oregon, will be based on the following schedule:

| Allowable non-treaty ocean harvest (thousands of fish) | Percentage ¹ | |
|--|-------------------------|-------------------|
| | Commer- cial | Recre- ational |
| Coho: | | |
| 0-300 | 25 | 75 |
| >300 | 60 | 40 |
| Chinook: | | |
| 0-100 | 50 | 50 |
| >100-150 | 60 | 40 |
| >150 | 70 | 30 |

¹ The percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, for a total allowable ocean harvest of 150,000 chinook, the recreational allocation would be equal to 50 percent of 100,000 chinook plus 40 percent of 50,000 chinook or 50,000 + 20,000 = 70,000 chinook.

(B) The initial allocation may be modified annually in accordance with paragraphs (iii) through (v) of this section.

(ii) Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, and spawning requirements. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

(iii) The following deviations from the allocation schedule will be allowed annually. These deviations provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs 2.(a) (iv) and (v) of this section.

(A) Preseason species trades (chinook and coho) may be made if they are based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon; simultaneously benefit both the commercial and recreational fisheries or benefit one fishery without harming the other; and are supported by a socio-economic analysis that compares the impacts of the recommendation to those of the standard allocation schedule to determine the allocation that best meets the allocation objectives. This analysis will be made available to the public during the preseason process for establishing annual management measures.

(B) Inseason transfers, including species trades of chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the harvest management objectives specified in the FMP including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer.

(C) Preseason trades will use an exchange ratio of four coho to one chinook as a desirable guideline. Inseason trades or transfers may vary from the guideline ratio to meet the allocation objectives in paragraph 2.(a)(iv) of this section.

(D) The percentages presented in the allocation schedule are averages for the entire area between Cape Falcon and the U.S.-Canada border. The geographic distribution of the allocation percentages may be varied by major subareas (i.e., north of Leadbetter Point and south of Leadbetter Point) if there is need to do so to protect the weak stocks. Deviations from the overall percentages in each major subarea will generally not exceed 50 percent of the allocation of each species that would have been established in the absence of the transfer. Deviation of more than 50 percent will be based on a conservation need to protect the weak stocks and will provide larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation.

(iv) The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the following objectives for the commercial and recreational fisheries. When deviation from the allocation schedule is being considered, these objectives will serve as criteria to help

determine whether a user group will benefit from the deviation.

(A) Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily and area closures and restrictions on gear and daily limits.

(B) Maximize the value of the commercial harvest while providing fisheries of reasonable duration.

(v) The following fishery allocation priorities will provide guidance in the preseason process of establishing final harvest allocations and structuring seasons that best achieve the allocation objectives. To the extent fish are provided to each fishery by the allocation schedule, these priorities do not favor one user group over the other and should be met simultaneously for each fishery. Seasons may be structured that deviate from these priorities consistent with the allocation objectives.

(A) At total allowable harvest levels up to 300,000 coho and 100,000 chinook: For the recreational fishery, provide coho for a late June through early September all-species season; provide chinook to allow access to coho and, if possible, a minimal chinook-only fishery prior to the all-species season; and adjust days per week and/or institute area restrictions to stabilize season duration. For the commercial fishery, provide chinook for a May and early June chinook season and provide coho for hooking mortality and/or access to a pink fishery, and ensure that part of the chinook season will occur after June 1.

(B) At total allowable harvest levels above 300,000 coho and above 100,000 chinook: For the recreational fishery, relax any restrictions in the all-species fishery and/or extend the all-species season beyond Labor Day as coho quota allows; provide chinook for a Memorial Day through late June chinook-only fishery; and adjust days per week to ensure continuity with the all-species season. For the commercial fishery, provide coho for an all species season in late summer and/or access to a pink fishery; and leave adequate chinook from the May through June season to allow access to coho.

12. In the Appendix, in section II.B.7., in paragraph (a), the second sentence is removed; paragraphs (c) (i) through (iii) are removed; paragraphs (c) (iv) and (v) are redesignated as (c) (i) and (ii), respectively; paragraphs (d) (i) and (ii) are removed; and paragraph (d) introductory text and paragraph (d)(iii) are redesignated as paragraph (d).

13. In the Appendix, in section II.B., new paragraphs 11 and 12 are added to read as follows:

* * * * *

II. * * *

B. * * *

11. Inseason notice procedures.

Telephone hotlines and U.S. Coast Guard broadcasts will provide actual notice of inseason actions for commercial, recreational, and treaty Indian fishing. Fishermen must

monitor either or both information sources. Inseason actions will also be published in the **Federal Register** as soon as practicable.

12. Reporting requirements.

Reporting requirements for commercial fishing may be imposed as necessary to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief radio report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually.

14. In the Appendix, in section III.A.1., the words "by publishing a notice in the **Federal Register**" are revised to read "by notice issued".

15. In the Appendix, in section III.B.2., paragraph (c) is revised to read as follows:

III. Inseason Changes to Management Measures

B. General procedures for flexible inseason management provisions.

2. * * *

(c) Notice of inseason actions will be available through telephone hotlines and U.S. Coast Guard broadcasts. In addition, notice of inseason actions will be filed with the **Federal Register** as soon as practicable.

16. In the Appendix, in section IV.A., in the table "Summary of Specific Management Goals for Stocks in the Salmon Management Unit," in the third column, the heading "Rebuilding schedule" and the accompanying text in the column is removed; in the row for Klamath Fall Chinook, in the second column, the words "97,500 natural; 17,500 hatchery" are revised to read "35 percent of the potential adults from each brood of natural spawners, but no fewer than 35,000 naturally spawning adults in any one year³"; and footnote 3 is revised to read "The minimum escapement floor of 35,000 naturally spawning adults may be modified only by amendment to the FMP."

[FR Doc. 89-10634 Filed 5-1-89; 9:25 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 54, No. 85

Thursday May 4, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ACE-09]

Proposed Alteration of Transition Area—Maryville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at Maryville, Missouri. The present transition area does not encompass certain airspace above Ranking Airport near Maryville, Missouri. The purpose of this amendment is to include that airspace in the Maryville transition area designation.

DATES: Comments must be received on or before June 7, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of the Federal Aviation Regulations (14 CFR Part 71, Subpart G) to alter the 700-foot transition area at Maryville, Missouri. During an FAA review process, it was noted that there was a cutout in the transition area airspace over the Ranking Airport, near Maryville, Missouri. This cutout is unnecessary since VFR operations to or from the Ranking Airport are not prohibited below the floor of the transition area. This purpose of this amendment is to include that airspace in the Maryville transition area designation.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipate impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Maryville, Missouri [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Maryville Memorial Airport (lat., 40°21'00" N., long. 94°54'45" W.), and 3 miles either side of the 333° bearing from the Emville, Missouri, NDB (lat. 40°20'54" N., long. 94°54'55" W.) from the 5-mile radius to 8.5 miles northwest of the NDB.

Issued in Kansas City, Missouri, on April 14, 1989.

Richard J. Tomany,

Acting Manager, Air Traffic Division.

[FR Doc. 89-10665 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-17]

Proposed Revocation of Transition Area, Andrews, SC**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Andrews, SC, Transition Area. The Transition Area was established to provide controlled airspace protection for Instrument Flight Rule (IFR) operations at the Andrews Municipal Airport. The Punch Nondirectional Radio Beacon (NDB) which supports the only Standard Instrument Approach Procedure (SIAP) to the airport is being decommissioned. Thus, a need no longer exists for the Transition Area. This proposed rulemaking action would also change the operating status of the airport from IFR to Visual Flight Rule (VFR).

DATES: Comments must be received on or before: June 10, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-17, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION

CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed,

stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Andrews, SC, Transition Area. The Transition Area was initially established to provide controlled airspace protection for IFR operations at the Andrews Municipal Airport. Since the Punch NDB is being decommissioned and the airport is no longer served by a published Standard Instrument Approach Procedure, the Transition Area is no longer required for protection of IFR aeronautical operations. This action would also change the operating status of the Andrews Municipal Airport from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Andrews, SC [Removed]

Issued in East Point, Georgia, on April 20, 1989.

William D. Wood,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-10666 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration**23 CFR part 658**

[FHWA Docket No. 87-1, Notice No. 3]

RIN 2125-AC10

Truck Size and Weight; Reasonable Access

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The FHWA issued a notice of proposed rulemaking (NPRM) which was published in the *Federal Register* on December 30, 1988 (53 FR 53006). Through this NPRM, the FHWA requested comments from all interested

and/or affected parties regarding the proposed changes that would define "terminals" and establish national minimum access requirements for STAA-defined commercial vehicles to and from the National Network. The comment period is presently scheduled to close May 1, 1989. The FHWA has received several communications supporting or opposing an extension of the comment period. Those supporting the extension wanted to have the benefit of the results of the Transportation Research Board study on "reasonable access" before commenting. Those opposed to the extension felt that any delay would postpone implementation of a needed action still further. After weighing both positions, the FHWA has decided to provide the additional opportunity for comment.

The comment period is, therefore, being extended to Friday, September 1, 1989.

DATE: Comments must be received on or before September 1, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. 87-1, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin E. Heanue, Office of Planning, (202) 366-2951, Mr. John F. Grimm, Office of Motor Carrier Information Management and Analysis, (202) 366-4039, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1356, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

(Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48)

Issued on April 26, 1989.

R.D. Morgan,
Executive Director.

[FR Doc. 89-10653 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

RIN 0970-AA47

Aid to Families With Dependent Children; Adult Assistance Programs; Exclusion of Indian Trust Funds and Alaska Native Claims Settlement Act Distributions

AGENCY: Family Support Administration, HHS.

ACTION: Proposed rules.

SUMMARY: The proposed rules would update the statutory exclusions contained in regulations for the Aid to Families with Dependent Children (AFDC) program and the adult assistance programs in Guam, Puerto Rico and the Virgin Islands, by adding the income and resources exclusions provided under section 4 of Pub. L. 97-458, section 2 of Pub. L. 98-64 and section 15 of Pub. L. 100-241. Section 4 of Pub. L. 97-458 provides that Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress are excluded from income and resources. Section 2 of Pub. L. 98-64 provides that all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to members of that tribe are excluded from income and resources. Section 15 of Pub. L. 100-241 provides that the following distributions from a Native Corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA) will be excluded from income and resources: (1) Cash to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum; (2) stock; (3) a partnership interest; (4) land or an interest in land; and (5) an interest in a settlement trust. Under the current rules, only tax-exempt portions of ANCSA distributions are excluded.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than July 3, 1989.

ADDRESSES: Comments should be submitted in writing to the Administrator, Family Support Administration, Attention: Ms. Diann Dawson, Director, Division of Policy, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be

inspected during the same hours by making arrangements with the contact person shown below:

FOR FURTHER INFORMATION CONTACT:

Ms. Diann Dawson, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252-5116.

SUPPLEMENTARY INFORMATION:

Implementation of Pub. L. 97-458 and Pub. L. 98-64

Section 4 of Pub. L. 97-458, enacted January 12, 1983, amended section 7 of Pub. L. 93-134 and provides that certain Indian judgment funds that are held in trust by the Secretary of the Interior or are distributed on a per capita basis pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress, and purchases made with such funds, are excluded from income and resources under Social Security Act programs. Indian judgment funds include interest and investment income accrued while the funds were held in trust.

Section 2 of Pub. L. 98-64 removes the requirement that trust funds must derive from judgments granted to Indian tribes as a result of successful claims against the United States in order to be subject to the exclusion provisions in section 7 of Pub. L. 93-134, as amended by section 4 of Pub. L. 97-458. Section 2 of Pub. L. 98-64 provides for the exclusion of funds which are held in trust by the Secretary of the Interior for an Indian tribe and distributed on a per capita basis to members of that tribe, and purchases made with such funds. (These trust funds do not include the Indian judgment funds subject to Pub. L. 97-458.) Trust funds include interest and investment income accrued while the funds are held in trust. Under the proposed rules, the exclusion would be extended to initial purchases made with judgment funds under Pub. L. 97-458 and other trust funds under Pub. L. 98-64. For example, if an AFDC family receives a cash distribution from the Secretary of the Interior under Pub. L. 97-458, and uses it to buy \$1,000 worth of commodities, both the cash distribution itself (while the family holds it) and the commodities purchased with the distribution would be excluded from income and resources for AFDC purposes. However, should the family sell the commodities at some future time, then the proceeds of the sale would be counted. This is because the proceeds so received and their subsequent use result from a voluntary commercial transaction (i.e., a sale of

goods) rather than from a distribution by the Secretary of the Interior of funds held in trust. It is only these latter distributions that the Congress sought to protect Pub. L. 97-458. A similar analysis applies to trust fund distributions made under Pub. L. 98-64.

Action Transmittal Number SSA-AT-83-27 was issued on December 5, 1983 to advise public assistance agencies about the income and resources exclusions required by Pub. L. 97-458 and Pub. L. 98-64. The Action Transmittal provides that any purchases made with Indian judgment funds or other trust funds held by the Department of Interior and distributed on a per capita basis to members of an Indian tribe are excluded from income and resources. We recognize that some States may have interpreted the exclusion to include subsequent purchases even though the subject was not specifically addressed. Therefore, we plan to amend § 233.20 by revising paragraphs (a)(4)(ii)(e) and by adding two new paragraphs (a)(4)(ii)(n) and (o) to incorporate the provisions of section 4 of Pub. L. 97-458, and section 2 of Pub. L. 98-64.

Implementation of Pub. L. 100-241, the Alaska Native Claims Settlement Act Amendments of 1987

Section 15 of Pub. L. 100-241, enacted February 3, 1988, amended the Alaska Native Claims Settlement Act (ANCSA) by adding a new section 29(c) which provides that the following types of distributions received from a Native Corporation shall be excluded from income and resources: (1) Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum; (2) stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); (3) a partnership interest; (4) land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and (5) an interest in a settlement trust.

Under the proposed rules, the new income and resources exclusions mandated by section 29(c) would replace the current exclusion of tax-exempt ANCSA payments in § 233.20(a)(4)(ii)(k). With respect to the exclusion of cash payments, the phrase "per annum" is interpreted to mean per calendar year. We considered allowing States the flexibility to interpret the phrase "per annum" in establishing the period for applying the \$2,000 maximum for excluding cash payments under Pub. L. 100-241. This option was not selected because the same phrase applies to the

Supplemental Security Income (SSI) program. Therefore, for program consistency, we have interpreted "per annum" to mean per calendar year because it is the interpretation that the SSI program finds administratively feasible. With respect to the exclusion of resources, we interpret the statute to permit a maximum of \$2,000 in accumulated cash to be excluded from resources for each individual. Otherwise, an individual would be able to accumulate substantial resources over a period of years that would not be considered in determining eligibility. We view this as inconsistent with the establishment of a \$2,000 cap that specifically applies to resources held during a year. For example, where \$2,000 in cash payments is received by a recipient in one calendar year and retained into the next year, cash payments (up to \$2,000) received in the subsequent year would be excluded from income in the month(s) received, but counted as resources, if retained beyond that month(s).

Regulatory Procedures

Executive Order 12291

These regulations do not meet any of the three criteria which require a regulatory impact analysis under Executive Order 12291. Specifically, the regulations will not have any annual effect on the economy of more than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Nationally, we have determined that the Federal share of the cost of additional assistance payments under the AFDC and adult assistance programs resulting from the trust funds exclusions required under Pub. L. 97-458 and Pub. L. 98-64 would be \$696,960 per year. The Federal share of the cost of additional assistance payments resulting from the Alaska Native Claims Settlement Act exclusions required by Pub. L. 100-241 would be \$1,878,108 per year. Therefore, the estimated annual result would be a cost of \$2,575,068. For the most part, these costs are the direct result of the legislation and not the discretionary latitude of the Secretary. The regulations will also have a cost impact on Medicaid and other Federal programs which consider the receipt or

amount of AFDC/adult assistance as an eligibility factor.

Paperwork Reduction Act

We certify that these regulations, if promulgated, will not have a significant impact on a substantial number of small entities because they primarily affect State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, The Regulatory Flexibility Act, is not required.

These regulations are issued under the authority of section 4 of Pub. L. 97-458, section 2 of Pub. L. 98-64, section 15 of Pub. L. 100-241, and section 1102 of the Social Security Act.

(Catalog of Federal Domestic Assistance Programs 13.780 Assistance Payments Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: November 29, 1988.

Wayne A. Stanton,
Administrator, Family Support
Administration.

Approved: February 13, 1989.

Don M. Newman,
Acting Secretary of Health and Human
Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY

Part 233 of Chapter II, Title 45 Code of Federal Regulations is amended as set forth below:

The Authority citation for Part 233 is revised to read as follows and all other authority citations which appear throughout Part 233 are removed:

Authority: Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602, of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352 and 1382 note); Section 6 of Pub. L. 94-114, 89 Stat. 579; Part XXIII of Pub. L. 97-35, 95 Stat. 843; Pub. L. 97-248, 96 Stat. 324; Section 4 of Pub. L. 97-458, 96 Stat. 2513; Section 2 of Pub. L. 98-64, 97 Stat. 365; and Section 15 of Pub. L. 100-241, 101 Stat. 1812.

2. Section 233.20 is amended by revising paragraphs (a)(4)(ii)(e) and (a)(4)(ii)(k), and by adding two new paragraphs (a)(4)(ii)(n) and (o) to read as follows:

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* * * *

(4) *Disregard of income in OAA, AFDC, AB, ADTP, or AABD.* * * *

(ii) * * *

(e) Any funds distributed per capita to or held in trust for members of any

Indian tribe under Pub. L. 92-25 or Pub. L. 94-540;

(k) Pursuant to section 15 of Pub. L. 100-241, any of the following distributions from a Native Corporation established pursuant to The Alaska Native Claims Settlement Act (ANCSA) (Pub. L. 92-203, as amended):

(1) With respect to the income exclusion, cash (including cash dividends on stock received from a Native Corporation) is excluded to the extent that it does not, in the aggregate, exceed \$2,000 per individual per calendar year. With respect to the resources exclusion, cash retained after the month of receipt is excluded from resources to the extent that it does not, in the aggregate, exceed \$2,000 per individual;

(2) Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(3) A partnership interest;

(4) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(5) An interest in a settlement trust.

(n) Pursuant to section 7 of Pub. L. 93-134 as amended by section 4 of Pub. L. 97-458, Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress, and initial purchases made with such funds.

(o) Pursuant to section 2 of Pub. L. 98-64, all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to members of that tribe, and initial purchases made with such funds.

[FR Doc. 89-10714 Filed 5-3-89; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 90407-9107]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 12A to the Fishery Management Plan for the

Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). If approved, this proposed rule would regulate the incidental harvest of certain species of crabs and Pacific halibut by U.S. fishermen conducting commercial fisheries for groundfish in the U.S. exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) area. The proposed regulations are necessary for the conservation and management of marine fishery resources in the EEZ off Alaska and for the orderly conduct of the groundfish fisheries.

DATE: Comments on this proposed rule are invited until June 19, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. Individual copies of Amendment 12A and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ of the BSAI area are managed in accordance with the FMP. The FMP was developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations appearing at 50 CFR 611.93 and Part 675. The Council, on March 30, 1989, transmitted Amendment 12A to the FMP to the Secretary of Commerce (Secretary) for review, approval and implementation under sections 304(a) and 305(c) of the Magnuson Act.

The purpose of Amendment 12A is to limit incidental catches of *Chionoecetes bairdi* Tanner crab, red king crab (*Paralithodes camtschatica*), and Pacific halibut (*Hippoglossus stenolepis*) by the groundfish fisheries in the BSAI area and thus minimize the impact of domestic groundfish fisheries on these species. Such incidental catches are referred to as bycatches in fisheries targeting other species. The FMP and its implementing regulations define these species of crabs and halibut as prohibited species which, if caught while fishing for groundfish, must be returned to the sea with a minimum of injury (§ 675.20(c)).

To achieve this purpose, the Council proposes to specify prohibited species

catch (PSC) limits for *C. bairdi* Tanner crab, red king crab, and halibut, and to apportion these PSC limits among four specified groundfish fisheries. When a specified fishery reaches its apportionment of the PSC limit, it would be prohibited from specified areas or bycatch limitation zones for the remainder of the fishing year. A full description of the proposed amendment is given below.

Background

Fishing for groundfish, especially for species of flatfish or other demersal species, often involves towing trawl gear in contact with the sea bottom. Other bottom-dwelling species, such as crabs and halibut, are vulnerable to capture by trawl gear in addition to the target species. Pacific halibut, *C. bairdi* Tanner, and red king crabs are among those species defined as prohibited species in the FMP implementing regulations (§ 675.20(c)). The Council's policy is to provide additional incentive to avoid bycatches of Pacific halibut, *C. bairdi* Tanner, and red king crabs by using PSC limits and closed area controls. The Council's policy attempts to balance these controls with a reasonable opportunity for trawl fisheries to harvest their target species. The reason for this policy is that discarding crab and halibut is wasteful and may adversely affect their use as target species in other commercial fisheries, and potentially result in their being overfished.

The Council has debated and heard public testimony on this bycatch issue since 1986. At its January 1986 meeting, the Council heard evidence indicating that populations of *C. bairdi* Tanner crab and red king crab were dangerously low in abundance. The bycatch of these species in domestic trawl fisheries for groundfish could contribute significantly to the fishing mortality of these crab species. If excessive, this source of fishing mortality may retard the rebuilding of these crab stocks and adversely affect future crab fisheries. However, excessive bycatch controls could impose undue operating costs on the development of the domestic groundfish fisheries. The Council referred the bycatch issue to its Bycatch Committee for its consideration. The committee recommended PSC limits and area closures when the limits were attained. These recommended bycatch controls were compromises negotiated by the crab and groundfish fishing interests represented on the Bycatch Committee and, as such, define at what levels the bycatch of prohibited species will be

considered excessive. Most of the recommendations were implemented in 1987 as part of Amendment 10 to the FMP (52 FR 8592, March 16, 1987).

The Council intended for the bycatch control measures of Amendment 10 to expire at the end of 1988, due to uncertainty about fluctuations in population levels of prohibited species and development of domestic groundfish fisheries. During the effective period of the bycatch provisions implemented under Amendment 10, the Council developed similar but more comprehensive bycatch controls for 1989 and 1990, which it adopted at its December 1988 meeting. These controls are recommended to the Secretary as Amendment 12A to the FMP and are described below. As with the Amendment 10 controls, Amendment 12A reflects an effort to balance between excessive bycatch and unnecessarily high operating costs to control bycatch of prohibited species in the groundfish fishery. As such, the Council has determined that its recommended bycatch controls should provide the domestic groundfish fishery sufficient opportunity to harvest the total allowable catch of groundfish, while minimizing the wasteful discard of incidentally harvested prohibited species.

Description of Proposed Bycatch Management

The proposed bycatch management program that would be implemented, if FMP Amendment 12A is approved by the Secretary, has six principal features. They are described as follows:

1. Effective period

Bycatch management measures implemented under Amendment 12A would remain effective through December 31, 1990, unless earlier superseded by a subsequent FMP or regulatory amendment. For PSC accounting purposes, bycatch of crab and halibut is credited to the specified fisheries from the beginning of the fishing year.

2. Bycatch limitation zones

Three bycatch limitation zones are proposed (see Figure 2). Zones 1 and 2 would be identical to those under Amendment 10. A new halibut protection zone, Zone 2H, is proposed in that part of Zone 2 that is south of 56°30' N. latitude and between 165° and 170° W. longitude. These zones describe areas in which crabs and halibut are especially abundant. Approximately 88 percent of the total red king crab population is estimated to be within Zone 1. About 98 percent of the *C.*

bairdi Tanner crab population is estimated to be within Zones 1 and 2 combined and about 60 percent in only Zone 2. Pacific halibut are more broadly distributed in the Bering Sea than are crab species. However, Zones 1 and 2H combined encompass an area known for high abundance of juvenile halibut and for seasonal migration of halibut between deep and shallower continental shelf waters. Sequential closing of these zones to groundfish fisheries which have attained their share of the PSC limits provides for a reduction in bycatch rates without prohibiting the fisheries access to all Bering Sea groundfish resources.

Similarly to Amendment 10, proposed regulations that accompany Amendment 12A would close an area within Zone 1 south of 58° N latitude and between 160° and 162° W. longitude to all fishing with trawl gear. Under the proposed Amendment 12A, the western boundary of this closed area would be extended to 163° W. longitude during the period March 15 through June 15. The purpose of the year-long closure between 160° and 162° W. longitude is to protect red king crabs and *C. bairdi* Tanner crabs from trawl gear. The red king crab stock continues at depressed population levels and this area is considered the principal locus of the stock. The seasonal extension of the closed area is intended to provide additional protection to red king crabs, especially females during a critical molting and mating period when their shells are soft and more vulnerable to damage by trawl gear. This measure is based on a 1988 scientific survey of red king crab distribution, which indicates a significant movement of red king crabs, especially mature female animals into this area.

An exception to the closed area and its seasonal extension is provided in that part of the area south of a line approximating the 25 fathom isobath. This exception applies only to directed fishing for Pacific cod, provided that the PSC limit of 12,000 red king crabs is not exceeded. This exception is similar to that provided during 1987 and 1988 under Amendment 10. The purpose of this exception is to allow fishing for Pacific cod in that part of the closed area in which crab bycatch has been demonstrated to be relatively low.

3. Fisheries

Specified PSC limits would apply to the following domestic annual processing (DAP) and joint venture processing (JVP) trawl fisheries:

(a) "DAP flatfish fishery" means DAP fishing which, on a weekly basis, retains in the aggregate yellowfin sole, rock sole, and "other flatfish" in an amount

that is 20 percent or more of the total amount of groundfish retained.

(b) "DAP other fishery" means DAP fishing which, on a weekly basis, retains groundfish that is 95 percent or more pollock, or 50 percent or more pollock and Pacific cod in the aggregate, or any other combination of groundfish species that would not qualify such fishing as a "flatfish fishery."

(c) "JVP flatfish fishery" means JVP fishing which, on a weekly basis, delivers in the aggregate yellowfin sole, rock sole, and "other flatfish" in the aggregate to foreign vessels in an amount that is 20 percent or more of the total amount of groundfish delivered.

(d) "JVP other fishery" means JVP fishing which, on a weekly basis, delivers to foreign vessels groundfish that is 95 percent or more pollock, or 50 percent or more pollock and Pacific cod in the aggregate, or any other combination of groundfish species that would not qualify such fishing as a "flatfish fishery."

Foreign directed fishing would not be affected by this proposed rule. Allocations of groundfish in the BSAI area for foreign directed fishing have not occurred since 1987. If such an allocation were made during the effective period of the proposed rule, existing PSC limits specified in the foreign fishing regulations (§ 611.93) would apply to foreign fishing.

4. PSC Limits

For *C. bairdi* Tanner crab, the PSC limit would be 1,000,000 animals in Zone 1 and 3,000,000 animals in Zone 2. These PSC limits represent a compromise between the groundfish trawl fishing industry's position of one percent of the *C. bairdi* population as a PSC limit and the crab fishing industry's position of keeping the PSC limit to the minimum necessary. The most recent population size estimate of this crab species is 630 million animals. Hence, a PSC limit based on the trawl fishing industry's position would be about 6.3 million animals for Zones 1 and 2 combined. Although the proposed PSC limit is about 63 percent of what trawl fishermen wanted, it is 9.8 times greater than the *C. bairdi* PSC limits for Zones 1 and 2 under Amendment 10. However, these increases are similar to the approximately six-fold increase in the estimated *C. bairdi* population since the 1985 population estimate on which the Amendment 10 PSC limits were based.

For red king crab in Zone 1, the PSC limit would be specified as 200,000 animals. The PSC limit in Zone 1 is 48 percent greater than the Zone 1 PSC limit for this species established under

Amendment 10. In comparison with the 1985 crab survey on which the Amendment 10 PSC limit was based, the 1988 survey indicates relatively no change in total abundance of red king crab or its distribution, which continues to be almost entirely within the area defined as Zone 1. However, the age structure of this population has changed since 1985; the 1988 survey indicates little recruitment into the juvenile size classes of red king crabs. Partly for this reason, red king crab continues to be considered depressed by the State of Alaska Department of Fish and Game. However, the red king crab bycatch of more groundfish fisheries than under Amendment 10 would be counted against the proposed PSC limit, because Amendment 12a also covers the JVP and DAP "other fishery". An additional red king crab PSC limit of 12,000 animals is proposed for fishing under the exception to the closed area described in Zone 1.

Two PSC limits are proposed for Pacific halibut taken as bycatch in the entire BSAI area. Attainment of the primary PSC limit of 4,400 metric tons (mt) would effect prohibition of trawl fishing in Zones 1 and 2H combined. Attainment of the secondary PSC limit of 5,333 mt would effect prohibition of trawl fishing in the entire BSAI area. The halibut PSC limit established under Amendment 10 was 828,000 animals. The average size of halibut taken as bycatch in the groundfish fishery by trawl gear in 1988 was about 1.6 kilograms. Using this average size, 828,000 halibut are equivalent to about 1,325 mt under the Amendment 10 PSC limit. The proposed increase in the halibut PSC limit is due partly to an increase in the overall estimated exploitable biomass of halibut of about two percent between 1985 and 1987 to near historical high levels, and partly to the increase in fisheries in which halibut bycatch would be counted against a PSC limit.

5. Apportionment and monitoring of PSC limits

Each PSC limit will be apportioned among the four specified fisheries in proportion to the anticipated bycatch of each fishery. Anticipated bycatches for a fishing year will be derived from a mathematical model that predicts the total annual unconstrained bycatch by each fishery based on known or estimated bycatches from the most recent previous years. The proportion of a fishery's predicted bycatch to the total predicted bycatch of a species will be the share of that species' PSC limit apportioned to that fishery, or its PSC allowance, in the next fishing year.

Each PSC allowance will be determined annually by the Director, Alaska Region, NMFS (Regional Director), in consultation with the Council, and made available for public comment concurrently with the notice of preliminary initial specification of harvestable amounts of groundfish required under § 675.20(a)(6). A final notice of PSC allowances also will be published in Table 2 of part 675 concurrent with the final notice of initial specifications. Existing authority to make inseason adjustments to PSC limits would be revised to provide Secretarial discretion to redistribute a PSC allowance that is surplus to the actual, or refined projection of actual, bycatch of a fishery.

Since this amendment, if approved, would be implemented during 1989, the procedure described above for developing PSC allowances is not available for the 1989 fishing year. Consequently, proposed PSC allowances for 1989 appear in Table 2 of this proposed rule. Comments on proposed 1989 PSC allowances should be made in response to this notice in lieu of the procedure above.

Observed or estimated bycatches of crabs and halibut caught with groundfish will be counted and totals estimated using standard statistical procedures. The total bycatch of crabs and halibut reported or estimated for any one week (Sunday through Saturday) reporting period will be credited to the PSC allowance of the DAP or JVP "flatfish fishery" if the total amount of groundfish retained or delivered during that reporting period is composed in the aggregate of 20 percent or more of yellowfin sole, rock sole, and "other flatfish" and less than 50 percent pollock and Pacific cod (in the aggregate). If the total amount of groundfish retained or delivered in any one week reporting period is composed of 95 percent pollock, or 50 percent or more of pollock and Pacific cod in the aggregate, or any other combination of groundfish species which does not qualify as "flatfish," then the total amount of crabs and halibut taken as bycatch during that week will be credited to the PSC allowance of the DAP or JVP "other fishery." In the absence of observers on DAP fishing vessels, crab and halibut bycatches in the DAP fisheries will be calculated from estimated bycatch rates, based on the best available scientific information.

For DAP bycatch accounting purposes, discriminating between the "flatfish" and "other" fisheries will be based on a blend of data from the weekly catch/receipt reports required of

catcher/processors and mothership/processors under § 675.5(a)(3)(iv) and the fish ticket reports required of all DAP fishing vessels under § 675.5(a)(1). For purposes of determining when a DAP PSC limit is attained, the Regional Director may forecast bycatches of crabs and halibut based on recent weekly catch/receipt and fish ticket reports and pertinent and reliable observer reports, if any.

6. Enforcement

When the "JVP flatfish fishery" reaches its PSC limit of either *C. bairdi* Tanner crab or red king crab in Zone 1, the Secretary would prohibit the receipt by foreign vessels of groundfish caught from Zone 1 that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" for the remainder of the fishing year. Receipts of groundfish from Zone 1 that contain less than 20 percent of these flatfish species and that are consistent with any limits resulting from the "JVP other fishery," may continue. The same prohibition would be enforced in Zone 2 when the "JVP flatfish fishery" attains its PSC allowance of *C. bairdi* Tanner crab in Zone 2. Likewise, when the "JVP flatfish fishery" attains its primary PSC allowance of Pacific halibut anywhere in the BSAI area (i.e., that derived from the 4,400-mt PSC limit), then the Secretary would prohibit the receipt by foreign vessels of groundfish caught from Zones 1 and 2H that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" for the remainder of the fishing year. When the "JVP flatfish fishery" attains its secondary PSC allowance of Pacific halibut anywhere in the BSAI area (i.e., that derived from the 5,333-mt PSC limit), the Secretary would prohibit the receipt by foreign vessels of groundfish caught in any part of the BSAI area.

When the "JVP other fishery" attains its PSC allowance of either *C. bairdi* Tanner crab or red king crab in Zone 1, then the Secretary would prohibit the receipt by foreign vessels of groundfish caught with bottom trawl gear from Zone 1 that is composed of 20 percent or more pollock and Pacific cod in the aggregate for the remainder of the fishing year. Receipts of groundfish from Zone 1 that contain less than 20 percent pollock and Pacific cod in the aggregate, and that are consistent with any limits resulting from the "JVP flatfish fishery," may continue. The same prohibition would occur in Zone 2 when the "JVP other fishery" attains its PSC limit of *C. bairdi* Tanner crab in Zone 2. When the "JVP other fishery" attains its primary and secondary PSC allowances of

Pacific halibut (i.e., those derived from the 4,400-mt and 5,333-mt PSC limits, respectively), then the Secretary would prohibit the receipt by foreign vessels of groundfish caught with bottom trawl gear in Zones 1 and 2H or anywhere in the BSAI area, respectively, that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

When the "DAP flatfish fishery" attains its PSC allowance of either *C. bairdi* Tanner crab or red king crab in Zone 1, then the Secretary would prohibit DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" for the remainder of the fishing year in Zone 1. Directed fishing is defined at § 675.2. When the "DAP flatfish fishery" attains its PSC allowance of *C. bairdi* Tanner crab in Zone 2, then the Secretary would prohibit DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" for the remainder of the fishing year in Zone 2.

When the "DAP other fishery" attains its PSC allowance of either *C. bairdi* Tanner crab or red king crab in Zone 1, then the Secretary would prohibit DAP directed fishing with bottom trawl gear for pollock and Pacific cod for the remainder of the fishing year in Zone 1. The same prohibition would occur in Zone 2 when the "DAP other fishery" attains its PSC allowance of *C. bairdi* Tanner crab in that zone. This prohibition would occur in Zones 1 and 2H when the "DAP other fishery" attains its primary PSC allowance of Pacific halibut (i.e., that derived from the 4,400-mt PSC limit) taken anywhere in the BSAI area. When the "DAP other fishery" attains its secondary PSC allowance of Pacific halibut (i.e., that derived from the 5,333-mt PSC limit) taken anywhere in the BSAI area, then DAP directed fishing for pollock and Pacific cod with bottom trawl gear would be prohibited in the entire BSAI area.

Classification

This proposed rule is published under section 304(a)(1)(C) of the Magnuson Act as amended by Pub L. 99-659, which requires the Secretary to publish regulations proposed by the Council within 15 days of receipt of the fishery management plan amendment and regulations. At this time the Secretary has not determined that the amendment these regulations would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making these determinations, will take into account the data and comments received during the comment period.

The Council prepared an environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above and comments on it are requested.

The Under Secretary for Oceans and Atmosphere of NOAA (Under Secretary) has preliminarily determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA prepared by the Council, which concluded that past industry performance and public testimony indicate that the trawl fisheries will be able to reduce their bycatch rates for halibut and avoid early closures. Under some scenarios discussed in the RIR, losses to the trawl fisheries could exceed \$400 million in gross revenues. NOAA therefore invites comments addressing the likelihood that the trawl fleet will be able to reduce bycatch rates to the point that the impact would be less than \$100 million. A copy of the EA/RIR/IRFA may be obtained from the Council at the address above.

The Under Secretary concludes that this proposed rule, if adopted, would have significant effects on small entities. These effects have been discussed in the EA/RIR/IRFA, a copy of which may be obtained from the Council at the address above.

The Under Secretary determined that this proposed rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: April 27, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator For
Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.93 is amended by adding paragraph (b)(5) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

- (b) * * *
- (5) *Receiving groundfish prohibited.*
- (i) Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipt of U.S.-harvested groundfish that are composed of yellowfin sole, rock sole, and "other flatfish" in the aggregate in any amount greater than or equal to 20 percent of the total amount of groundfish received is prohibited in any bycatch limitation zone or statistical area defined in § 675.2 of this Title when the JVP bycatch allowance pertaining to such bycatch limitation zone or statistical area, as specified under § 675.21 of this Title, has been attained.
- (ii) Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipt of U.S.-harvested groundfish that are caught with bottom trawl gear and composed of pollock and Pacific cod in the aggregate in any amount greater than or equal to 20 percent of the total amount of groundfish received is prohibited in any bycatch limitation zone or statistical area defined in § 675.2 of this Title when the PSC allowance pertaining to such bycatch limitation zone or statistical area, as specified under § 675.21 of this Title, has been attained.
- * * *

PART 675—[AMENDED]

3. The authority citation for Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.2, two new definitions are added in alphabetical order, the definitions "Bycatch Limitation Zone 1 (Zone 1)" and "Bycatch Limitation Zone 2 (Zone 2)" are revised, and the definition of "statistical area" is amended by revising the introductory

text, redesignating paragraphs (f), (g), (h), and (i) as (h), (i), (j), and (k) respectively, and adding new paragraphs (f) and (g) to read as follows:

§ 675.2 Definitions.

Bottom trawl means a trawl in which the ground rope of the net is equipped with bobbins or roller gear.

Bycatch Limitation Zone 1 (Zone 1) means that part of the Bering Sea Subarea that is south of 58°00' N. latitude and east of 165°00' W. longitude (Figure 2).

Bycatch Limitation Zone 2 (Zone 2) means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates in the order listed (Figure 2):

| North latitude | West longitude |
|----------------|----------------|
| 54°30' | 165°00' |
| 58°00' | 165°00' |
| 58°00' | 171°00' |
| 60°00' | 171°00' |
| 60°00' | 179°20' |
| 59°25' | 179°20' |
| 54°30' | 167°00' |
| 54°30' | 165°00' |

Bycatch Limitation Zone 2H means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates (Figure 2):

| North latitude | West longitude |
|----------------|----------------|
| 54°30' | 165°00' |
| 56°30' | 165°00' |
| 56°30' | 170°00' |
| 55°44' | 170°00' |
| 54°30' | 167°00' |
| 54°30' | 165°00' |

Statistical area means any one of the eleven statistical areas of the Bering Sea and Aleutian Islands management area defined as follows (Figure 2):

(f) Statistical area 516—that part of Statistical area 511 that is south of 58° N. lat. and between 162° and 163° W. long.;

(g) Statistical area 517—that part of Statistical area 513 that is south of 56°30' N. lat. and between 165° and 170° W. long.;

5. In § 675.7, paragraph (c) is revised and (d) is added to read as follows:

§ 675.7 General prohibitions.

(c) Use a vessel:

(1) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl

gear in violation of § 675.22(a) of this part unless specifically allowed by the Secretary as provided under § 675.22 (b), (c), and (d) of this part;

(2) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear at any time when no scientific data collection and monitoring program exists or after such a program has been terminated; or

(3) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear without complying fully with a scientific data collection and monitoring program established by the Regional Director under § 675.22 (c) and (d) of this part; or

(d) conduct any fishing contrary to a notice issued under § 675.21 of this part.

6. In § 675.20, add the phrase "or PSC allowance" after the phrase "PSC limits" in paragraph (e)(1)(iii) and after the phrase "PSC limit" in both places where it appears in paragraph (e)(2)(ii). 7. In § 675.20, paragraph (e)(4) is revised to read as follows:

§ 675.20 General limitations.

(e) ***
(4) The adjustment of a TAC or PSC limit or PSC allowance for any species under paragraph (e)(1)(iii) of this section must be based on the available scientific information concerning the biological stock status of the species in question and on the Regional Director's determination that the currently specified TAC or PSC limit or PSC allowance is incorrect. Any adjustment to a TAC or PSC limit or PSC allowance must be reasonably related to a change in biological stock status, except a PSC limit or PSC allowance may be adjusted if it was incorrectly specified.

8. Section 675.21 is revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) *PSC limits.* (1) The PSC limit of red king crab caught while conducting any domestic trawl fishery for groundfish in Zone 1 during any fishing year is 200,000 red king crabs.

(2) The PSC limit of Tanner crab (*C. bairdi*) caught while conducting any domestic trawl fishery for groundfish in Zone 1 during any fishing year is 1 million animals.

(3) The PSC limit of Tanner crab (*C. bairdi*) caught while conducting any domestic trawl fishery for groundfish in Zone 2 during any fishing year is 3 million animals.

(4) The primary PSC limit of Pacific halibut caught while conducting any domestic trawl fishery for groundfish in

the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 4,400 metric tons.

(5) The secondary PSC limit of Pacific halibut caught while conducting any domestic trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 5,333 metric tons.

(b) *Apportionment of PSC limits.* (1) The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will apportion each PSC limit into PSC allowances that will be assigned to each fishery specified in paragraph (b)(3) of this section, according to its anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified through the use of a mathematical prediction procedure based on statistical information derived from fisheries performance in previous years and expectations of projected performances of the fisheries.

(2) The Secretary will publish PSC limits and PSC allowances annually in the notices required under § 675.20(a)(6) of this part. Public comment will be accepted by the Secretary for a period of 30 days after the first publication of the amounts. Table 2 lists PSC allowances for purposes of this paragraph.

(3) For purposes of this section, four domestic fisheries are defined as follows:

(i) "DAP flatfish fishery" means DAP fishing operations that retain, on a weekly basis, yellowfin sole, rock sole, and "other flatfish" in the aggregate in an amount equal to or greater than 20 percent of the total amount of groundfish retained.

(ii) "DAP other fishery" means DAP fishing operations that retain, on a weekly basis, groundfish composed of 95 percent or more pollock, or 50 percent or more pollock and Pacific cod in the aggregate, or any other combination of groundfish species which does not qualify the fishery as a "flatfish fishery."

(iii) "JVP flatfish fishery" means JVP fishing operations that deliver, on a weekly basis, yellowfin sole, rock sole, and "other flatfish" in the aggregate in an amount equal to or greater than 20 percent of the total amount of groundfish delivered.

(iv) "JVP other fishery" means JVP fishing operations that deliver, on a weekly basis, groundfish composed of 95 percent or more pollock, or 50 percent or more pollock and Pacific cod in the aggregate, or any other combination of groundfish species which does not qualify the fishery as a "flatfish fishery."

(c) *Attainment of a PSC allowance.* (1) By the "DAP flatfish fishery."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zone 2 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zones 1 and 2H by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in the entire Bering Sea and Aleutian Islands Management Area by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(2) By the "DAP other fisheries."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal**

Register prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zone 2 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zones 1 and 2H by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in the entire Bering Sea and Aleutian Islands Management Area by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(3) By the "JVP flatfish fishery."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 1 that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while

participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 2 that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zones 1 and 2H that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught in the entire Bering Sea and Aleutian Islands Management Area that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(4) By the "JVP other fisheries."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 1 with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 2 with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the

Bering Sea and Aleutian Islands Management Area while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zones 1 and 2H with bottom trawl gear that is

composed of 20 percent or more pollock and Pacific cod in the aggregate.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "JVP other fishery," the Secretary

will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught in the entire Bering Sea and Aleutian Islands Management Area with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

TABLE 2.—1989 PROHIBITED SPECIES CATCH ALLOWANCES

| Fisheries | Zone 1 | Zone 2 | Zones 1 + 2H primary | BSAI-wide secondary |
|--|---------|-----------|-------------------------|------------------------|
| Red king crab, animals: | | | | |
| DAP flatfish fisheries..... | 50,579 | | | |
| DAP other fisheries..... | 20,879 | | | |
| JVP flatfish fisheries..... | 111,858 | | | |
| JVP other fisheries..... | 16,684 | | | |
| <i>C. bairdi</i> Tanner crab, animals: | | | | |
| DAP flatfish fisheries..... | 86,970 | 260,910 | | |
| DAP other fisheries..... | 609,519 | 1,828,558 | | |
| JVP flatfish fisheries..... | 93,359 | 280,077 | | |
| JVP other fisheries..... | 210,152 | 630,455 | | |
| Pacific halibut, metric tons: | | | | |
| DAP flatfish fisheries..... | | | 181 | 220 |
| DAP other fisheries..... | | | 3,408 | 4,131 |
| JVP flatfish fisheries..... | | | 146 | 177 |
| JVP other fisheries..... | | | 665 | 805 |

9. Section 675.22 is revised to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea Subarea that is south of 58°00' N. latitude and between 160°00' W. longitude and 162°00' W. longitude (see Figure 2) except as described in paragraph (c).

(b) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea Subarea that is south of 58°00' N. latitude and between 162°00' W. longitude and 163° W. longitude during the period March 15 through June 15 except as described in paragraph (d) of this section.

(c) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in

paragraph (a) of this section that lies south of a straight line connecting the coordinates 56°43' N. latitude, 160°00' W. longitude, and 56°00' N. latitude, 162°00' W. longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(d) During the period March 15 through June 15, the Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (b) of this section that lies south of a line connecting 56°00' N. latitude, 162° W.

longitude and 55°38' N. latitude, 163°00' W. longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(e) If the Regional Director determines that vessels fishing with trawl gear in the areas described in paragraphs (a) and (b) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately prohibit all fishing with trawl gear in those areas by notice in the **Federal Register**.

10. Figure 2 is revised and placed at the end of the Part to read as follows:

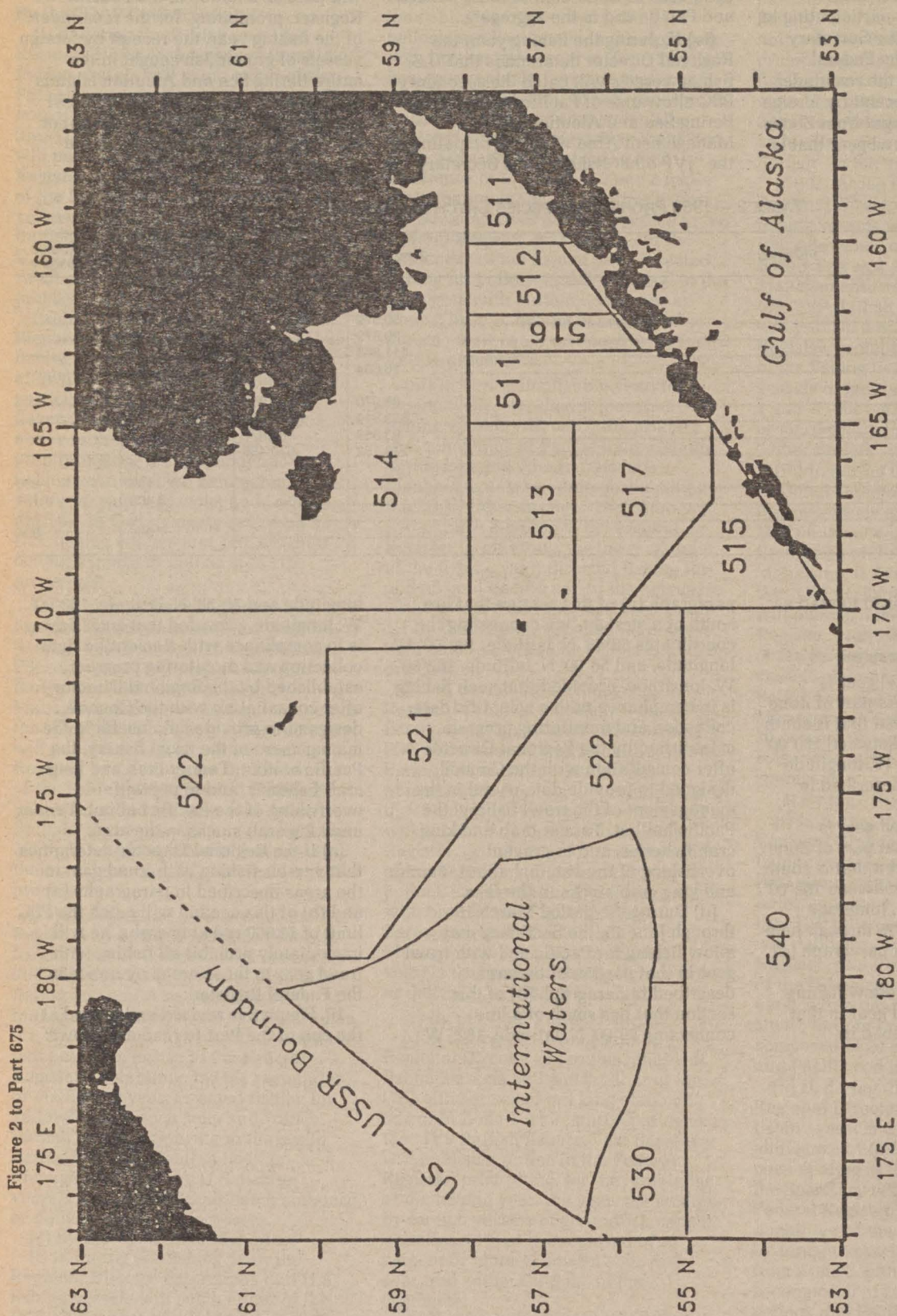


Figure 2. Statistical reporting areas in the BS/AI (Amendment 12A)

Bycatch protection zones:

- Zone 1 = 511 + 512 + 516
- Zone 2 = 513 + 517 + 521
- Zone 2H = 517

Notices

Federal Register

Vol. 54, No. 85

Thursday, May 4, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 28, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Reinstatement

- Agricultural Stabilization and Conservation Service.

7 CFR Part 1421 Standards for Approval of Warehouses
CCC-25 and 26 and related forms
Recordkeeping; Annually
Businesses or other for-profit; 30,713 responses; 24, 845 hours; not

applicable under 3504(h). Lynn Howe (202) 447-5785.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
FR Doc. 89-10612 Filed 5-3-89; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Andrus Timber Sale; Beaverhead National Forest, Montana; Intent To Prepare an Environmental Impact Statement

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest and regenerate timber and construct and reconstruct roads in portions of the Andrus Creek and Peterson Lake area of the Dillon Ranger District, Beaverhead National Forest, Beaverhead County, Montana. This EIS will tie to the Beaverhead National Forest Land and Resource Management Plan of April 1986, which provides overall guidance in achieving the desired future condition for the area. The purpose and goal for the proposed actions are to help satisfy short-term demands for timber, and maintain a continuous supply of timber in the future.

While some preliminary scoping was done for this project during the preparation of an Environmental Assessment for the Andrus Timber Sale in 1986-87, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. This input will be used in preparing the Draft Environmental Impact Statement (DEIS). This process will include:

1. Identification of Potential Issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.

The Montana Department of Fish, Wildlife, and Parks will be consulted.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

DATE: Comments concerning potential management opportunities should be received by May 12, 1989.

ADDRESS: Send written comments to Ronald Prichard, Forest Supervisor, 610 N. Montana Street, Dillon, MT 59725.

FOR FURTHER INFORMATION CONTACT: Lee Derksen, Andrus Interdisciplinary Team Leader, or Barry Hicks, District Ranger, Dillon Ranger District, Beaverhead National Forest, P.O. Box 1258, Dillon, MT 59725.

SUPPLEMENTARY INFORMATION: The Land and Resource Management Plan for the Beaverhead National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The areas of proposed timber harvest, regeneration, road construction and reconstruction will occur within Forest Plan Management Areas 13, 16, 19, 20, and 21.

Management Area Descriptions

Management Area 13—Areas suitable for timber management on moist sites characterized by springs, seeps and wet areas. Usually requires selection systems and cable yarding.

Management Area 16—Areas that are available and suitable for timber management

Management Area 19—Areas with high wildlife values such as summer range, security cover, elk calving areas, or limited winter range; generally on slopes less than 45 percent on existing livestock grazing allotments.

Classified as suitable for timber management at low intensity levels with no planned cultural treatments.

Management Area 20—Same as Management Area 19 except that timber management will be at moderate levels permitting cultural treatments.

Management Area 21—A variety of forested lands with high wildlife values such as summer range, elk calving areas, security cover or limited winter range; outside of existing range allotments; classified as suitable for timber management.

The Tash Peak Roadless Area 1-005, totalling 62,094 acres, is located within the Andrus Creek/Peterson Lake area and would be affected by the proposed timber harvest, regeneration, and road construction and reconstruction.

The analysis will consider a range of alternatives. One of these will be the "no action" alternative, in which all harvest and regeneration activities would not be implemented. Other alternatives will examine various levels and locations of harvest and regeneration in response to issues, goals and objectives.

The EIS will disclose the analysis of the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is important. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments. They are the scoping process which is now through May 12, 1989 and in the review of the Draft EIS during June, July, 1989.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in June 1989. At that time the EPA will publish a notice of availability of the DEIS in the *Federal Register*. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by October, 1989. The Forest Service will respond in the FEIS to the comments received on the DEIS. The Forest Supervisor who is the responsible official for this EIS will make a decision regarding this proposal considering the comments, responses and environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Ronald Prichard, Forest Supervisor of the Beaverhead National Forest, the Responsible Official.

Ronald C. Prichard,

Forest Supervisor, Beaverhead National Forest.

Date: April 24, 1989.

[FR Doc. 89-10733 Filed 5-3-89; 8:45 am]

BILLING CODE 3410-11-M

Flathead National Forest, Swan Lake Ranger District, Lake County, State of Montana; Van Alder Timber Sale

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: This is a revision of the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Van Alder area which appeared in the *Federal Register* on October 19, 1988. While the previous Notice of Intent addressed several proposed actions which were to be addressed by the EIS, this revised notice focuses on the intent of the Forest Service to analyze and disclose the environmental impacts of the specific proposal to harvest timber and construct roads in the Van Lake/Alder Creek area of the Swan Valley. This EIS will tier to the Flathead National Forest Land and Resource Management Plan of January, 1986, which provides overall guidance in achieving the desired future condition for the area. The primary purpose and goal for the proposed action is to meet winter range objectives while satisfying short term demands for timber.

While some preliminary scoping was done for this project during the preparation of an Environmental Assessment for the Van Alder Analysis Area in 1987-88, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

DATE: Comments concerning the scope of the analysis should be received by May 5, 1989 to receive timely consideration in the preparation of the draft EIS.

ADDRESS: Send written comments to William L. Pederson, District Ranger, Swan Lake Ranger District, P.O. Box 370, Bigfork, MT 59911.

FOR FURTHER INFORMATION CONTACT:

Jane Ingebretson, Van Alder Interdisciplinary Team Leader, or William L. Pederson, District Ranger, Swan Lake Ranger District, Flathead National Forest, P.O. Box 370, Bigfork, MT 59911.

SUPPLEMENTARY INFORMATION:

Management activities under consideration would occur in an area encompassing approximately 9000 acres of National Forest lands in the Upper Swan Geographic Unit, as delineated in the Flathead Forest Plan. Included in the area of analysis are all or portions of the following: sections 1-5, 8-17, 21-28, 34-36, T22N, R17W; sections 1-3, T21N, R17W; sections 19, 30, 31, T22N, R16W; and section 6, T21N, R16W, Principal Montana Meridian.

The Land and Resource Management Plan for the Flathead National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction.

Most areas of proposed harvest and road construction for the Van Alder project are within Management Areas 9 and 13. Forest plan direction states that Management Area 9 consists of timberlands capable of providing whitetailed deer winter habitat. Management Area 13 consists of timberlands capable of providing mule deer and elk winter habitat. The management goal for these two management areas is to provide the size, age, diversity, and distribution of habitat units (both cover and forage areas) suitable for whitetailed deer winter habitat and suitable for mule deer and elk winter habitat. Management of other resources must be compatible with the winter range management goals. Timber harvest, as well as prescribed burning, can be used to improve or maintain the optimum relationship of cover to forage.

In addition, road construction, reconstruction, and timber harvest and reforestation may occur within Management Area 12 (riparian areas along perennial streams). Management goals for Management Area 12 are to emphasize old-growth habitat, water quality and fisheries and vegetative diversity for wildlife habitat.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which the harvest and road construction activities would not be implemented. Other alternatives will examine various levels and locations of harvest and road construction to provide emphasis on

differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing the Forest Plan. The EIS will disclose the analysis of the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process (now thru May 5, 1989) and in the review of the Draft EIS (June-August, 1989). The Forest Service has not yet determined whether any public meetings will be held.

The U.S. Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species including grizzly bear, gray wolf, and bald eagle.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) in June, 1989. At that time the EPA will publish a notice of availability of the draft EIS in the *Federal Register*. The public comment period on the draft EIS will be 45 days from the date when the EPA's notice of availability appears in the *Federal Register*. Following this comment period, the comments received will be analyzed and considered by the Forest Service in the final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by mid-September, 1989. The Forest Service will respond in the FEIS to the comments received on the draft EIS. The official who is responsible for the preparation of this EIS will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

William L. Pederson, District Ranger for the Swan Lake Ranger District,

Flathead National Forest, is the Responsible Official.

Date: April 28, 1989.

William L. Pederson,
District Ranger, Swan Lake Ranger District,
Flathead National Forest.

[FR Doc. 89-10734 Filed 5-3-89; 8:45 am]

BILLING CODE 3410-11-M

Coffee Compartment Black Mountain 2 Timber Sale; Sequoia National Forest, Tulare County, California; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest timber in the Black Mountain Roadless Area in the Coffee Compartment of the Tule River District of the Sequoia National Forest.

The Sequoia National Forest Land and Resource Management Plan has been prepared. One of the management emphasis in the plan is to harvest timber on lands within the Coffee Compartment.

The alternatives to be considered will range from no action to harvesting volume up to eight million board feet. Within the context of these alternatives, alternative rotation lengths for stands designated as helicopter yarding, alternative methods of slash disposal for stands designated as cable yarding, and alternative amounts of road construction will be considered.

Federal, State, and local agencies; the Tule River Indian Reservation; potential purchasers of the timber; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

To determine the scope of issues to be addressed and for identifying significant issues related to the proposed timber sale, the Tule River District Ranger will be sending to known interested individuals, agencies, and organizations scoping letters inviting comments on the proposed timber sale. A press release for area media will be prepared to invite comments from the public. The Tule River District Ranger will also respond to requests for meetings with organizations and individuals.

James A. Crates, Forest Supervisor, Sequoia National Forest, Porterville, California, is the responsible official.

The analysis is expected to take about 18 months. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and be available for a 45 day public review period by January 1990. At that time EPA will publish a notice of availability of the draft EIS in the *Federal Register*. It is very important that those interested in the management of the Coffee Compartment participate at that time. To be most helpful, comments on the draft EIS should be specific as possible and may address adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc. v. Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final environmental impact statement is scheduled to be completed by October 1990. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal.

Written comments and suggestions concerning the analysis should be sent to Del Pengilly, District Ranger, Sequoia National Forest, Tule River Ranger District, 32588 Highway 190, Springville, California 93265, by August 1, 1989. This date is necessary to provide the

interdisciplinary team with public concerns prior to their field analysis.

Questions about the proposed action and environmental impact statement should be directed to John Gerritsma, Planning Forester, Tule River Ranger District, phone 209-539-2607.

Date: April 26, 1989.

James A. Crates,
Forest Supervisor.

[FR Doc. 89-10749 Filed 5-3-89; 8:45 am]

BILLING CODE 3410-11-M

Wishon Compartment, Alnus and Mahin Timber Sales; Sequoia National Forest, Tulare County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to harvest timber in the Wishon Compartment of the Tule River District of the Sequoia National Forest.

The Sequoia National Forest Land and Resource Management Plan has been prepared. One of the management emphasis in the plan is to harvest timber on lands within the Wishon Compartment.

The planned timber sales are within the Moses Mountain Roadless Area. The alternatives to be considered will range from no action to harvesting volumes up to twenty-one million board feet. Within the context of these alternatives, alternative rotation lengths for stands designated as helicopter yarding, alternative methods of slash disposal for stands designated as cable yarding, alternative logging methods to reduce the visual impacts, and alternative amounts of road construction will be considered.

Federal, State, and local agencies, the Tule River Indian Reservation; potential purchasers of the timber; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

To determine the scope of issues to be addressed and for identifying significant issues related to the proposed timber sale, the Tule River District Ranger will be sending to known interested individuals, agencies, and organizations scoping letters inviting comments on the proposed timber sale. A press release

for area media will be prepared to invite comments from the public. The Tule River District Ranger will also respond to requests for meetings with organizations and individuals.

James A. Crates, Forest Supervisor, Sequoia National Forest, Porterville, California, is the responsible official.

The analysis is expected to take about 26 months. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and be available for a 45 day public review period by November 1990. At that time EPA will publish a notice of availability of the draft EIS in the Federal Register. It is very important that those interested in the management of the Wishon Compartment participate at that time. To be most helpful, comments on the draft EIS should be specific as possible and may address adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc. v. Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final environmental impact statement is scheduled to be completed by June 1991. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal.

Written comments and suggestions concerning the analysis should be sent to Del Pengilly, District Ranger, Sequoia

National Forest, Tule River Ranger District, 32588 Highway 190, Springville, California 93265, by September 1, 1989.

Questions about the proposed action and environmental impact statement should be directed to John Gerritsma, Planning Forester, Tule River Ranger District, phone 209-539-2607.

James A. Crates,
Forest Supervisor.

Date: April 26, 1989.

[FR Doc. 89-10735 Filed 5-3-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 8116-01, 8116-02]

Rene Inbar, Individually and Doing Business as International Processing Systems GmbH Respondent; Export Privileges

Background

This matter comes before me as a result of the March 31, 1989, Order to Dismiss for Failure to Prosecute rendered by the Administrative Law Judge (ALJ). The Order dismisses with prejudice the administrative proceedings filed against the Respondents. Although I agree with the ALJ's recommendation, I do not do so for the reasons stated.

Discussion

On June 29, 1988, the Department charged the Respondents with some 10 violations of the Export Administration Act. On March 24, 1989, a request by the Department to withdraw the charging letter was denied by the ALJ. In its request, the Department stated that it did not expect to reissue the charges in the case.

In the March 31, 1989 Order, the ALJ based his recommendation that the charges be dismissed with prejudice on an inference that the conduct of the counsel in the matter had been less than diligent and that the proceedings were intentionally drawn out by Agency counsel. Based on my review of the record, I am unable to agree with this characterization of the proceedings.

I do, however, believe that as a matter of fairness the charges in this matter should be dismissed with prejudice. The Department has requested that the charges be withdrawn; it has agreed with the ALJ's recommendation to dismiss the charges; and, it has stated an intent not to reissue charges in this case. Based upon this, I see no justifiable reason why these proceedings should be allowed to continue.

Order

Having examined the record, and based on the facts before me in this case, I hereby affirm the ALJ's recommendation to dismiss with prejudice this matter.

This constitutes final agency action on this matter.

Date: April 28, 1989.

Paul Freedenberg,

Under Secretary For Export Administration.

Order to Dismiss for Failure to Prosecute

In the matter of Renee Inbar, individually and doing business as, International Processing Systems GmbH, Respondent.

In a charging letter dated June 29, 1988 Respondents were accused of committing some 10 violations of the Export Administration Act. Through Counsel an answer was timely filed. Discovery followed, and by mid-November 1988, because there had been no response to an Order issued in early October, a schedule for the adjudication was fixed. Based in part upon the representation that a stipulated record was likely, an extension was granted. On March 2, 1989 Agency Counsel filed the exhibits list and summary of witnesses' testimony as called for in the modified scheduling order issued on December 19, 1988. Here again the Respondent intention to waive a hearing was expressed. Respondents' Counsel did not make his filing and was held to be in default for such omission. A week later a renewed schedule was announced allowing written submissions by both Parties. Respondents' Counsel protested the change particularly to the written submissions on the record in lieu of the hearing. However he has continued to be in default for failure to make the preliminary filing of exhibits and expected testimony. While the representation of his initial misunderstanding was accepted his continuing failure was not excusable.

On March 23, 1989 Respondents' then current motions to restructure the proceedings were denied as was Agency Counsel's request for an extension to make the filing called for in the Order of March 14, 1989 which set the schedule for written submissions. Counsel were both advised that after receipt of the evidentiary materials, which would have been readily available if they were prepared for hearing, consideration would be given to establishing a post-submission schedule for final presentations and adjudication.

On March 24, 1989 Agency Counsel filed a "Request For Leave to Withdraw Charging Letter" which was denied. Agency Counsel has failed to make the written evidentiary submission due on March 24, 1989. The time for Agency Counsel to submit that "paper case" in support of the allegations in the Charging Letter has passed and the record lacks substantive materials upon which either a default or on-the-record adjudication may be based. Agency Counsel has therefore failed to prosecute the case.

The conduct of both Counsel in this matter has been less than diligent. They have consumed over 8 months and have apparently done little or nothing. The facts of

the case were apparently developed and available in a U.S. District Court proceeding in which Respondents were acquitted. The inference to be drawn from the present state of the record is that the Agency has had no case, but has drawn out the proceeding at substantial expense to all involved, including Respondent and this Tribunal and when called upon to show its hand it has folded. Unfortunately this does not appear to be a singular instance of the Agency attempting to blackmail respondents into submission. By refusing to follow the agreed upon Administrative Conference rules respecting notice and assessment of penalties, an "in terrorism" atmosphere is created which is well calculated to compel parties to compromise without respect to fault. If Agency Counsel had done any homework on this case his evidence would have been ready to present. The list in his Preliminary Positions on Issues and Procedures should have been complete respecting evidence. Unfortunately game playing instead of preparation appears to be Agency Counsel's mode.

In his Request for Leave to Withdraw the Charging Letter, Agency Counsel specifically reserved the right to recharge these Respondents, despite the fact that the alleged violations all took place over four and a half years ago. It is time to end, not suspend, these proceedings. It is not appropriate to have a Damocles sword over Respondents for some time, at this late date.

The inference to be drawn from the Agency action here is that there was not substantial justification for this proceeding and the Respondents are the prevailing parties. From the record before me, it appears that if the Equal Access to Justice Act applied to these proceedings the Respondent would be entitled to receive an award of attorney's fees.

The Administrative proceedings under the Export Administration Act against Renee Inbar, individually and doing business as International Processing Systems, GmbH are **DISMISSED** with prejudice.

So Ordered,

Hugh J. Dolan,

Administrative Law Judge.

Date: March 31, 1989.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3808B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 53 FR 37751 (1988). Pursuant to Section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-10654 Filed 5-3-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Postponement of Preliminary Antidumping Duty Determinations: Certain Small Business Telephone Systems and Subassemblies Thereof from Japan (A-588-809), Korea (A-580-803), and Taiwan (A-583-806)

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determinations, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)).

Based on this request, we are postponing our preliminary determinations as to whether sales of certain small business telephone systems and subassemblies thereof from Japan, South Korea, and Taiwan, have occurred at less than fair value until not later than July 26, 1989.

EFFECTIVE DATE: May 4, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple (202) 377-1769, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On January 24, 1989, (54 FR 3516-3520), we published notices of initiations of antidumping duty investigations to determine whether certain small business telephone systems and subassemblies thereof from Japan, South Korea and Taiwan, are being, or are likely to be, sold in the United States at less than fair value. The notices stated that we would issue our preliminary determinations by June 6, 1989.

On April 13, 1989, counsel for the petitioner requested that the Department extend the period for the preliminary determination by 50 days, until July 26, 1989, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination concerning sales at less than fair value until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioner has done so. Accordingly, we are postponing the date of the preliminary determinations until not later than July 26, 1989.

The U.S. International Trade Commission is being advised of these postponements in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary, for Import Administration.

April 27, 1989.

[FR Doc. 89-10601 Filed 5-3-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Amoco Production Company From Objection by the Alaska Division of Government Coordination

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On April 3, 1989, the Secretary of Commerce received a notice of appeal from Amoco Production Company (Amoco is appealing to the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the Alaska Division of Governmental Coordination (ADGC) to Amoco's consistency certification for its proposed Plan to Exploration (POE) for the Galahad Prospect, a group of twelve OCS leases located in the Beaufort Sea off the north coast of Alaska. The ADGC objected based on potential adverse impacts to the bowhead whale migration and the bowhead whale subsistence hunt from drilling below threshold depths during the fall migration.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122 (1988).

Amoco requests that the Secretary override the ADGC's consistency objections based on Grounds I and II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary

must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Alaska's coastal management program. See 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within thirty days of the publication of this notice and should be sent to Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Robert Grogan, Director, Division of Governmental Coordination, P.O. Box AW, Juneau, Alaska 99811; William S. Davis, Amoco Production Company, P.O. Box 800, Denver, Colorado 80201; Edward Hopsen, Chairman, Alaska Eskimo Whaling Commission, P.O. Box 570, Barrow, Alaska 99723; Honorable George N. Ahmaogak, Sr., Mayor, North Slope Borough, P.O. Box 69, Barrow, Alaska 99723.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the ADGC, Amoco and the Office of the Assistant General Counsel for Ocean Services, NOAA.

For Additional Information Contact: Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: April 26, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89-10728 Filed 5-3-89; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by the Asociacion de los Indios From An Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeal and request for comments.

On September 26, 1988, Annibal Irizarry, Esquire, on behalf of the Association de los Indios (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the Puerto Rico Planning Board (State) to the Appellant's certification that its proposed projects to reconstruct a private road and to construct residential houses, landfills, piers and bulkheads and for after-the-fact permits for some landfills and structures already produced in Salinas, Puerto Rico are consistent with Puerto Rico's coastal management program. The State's objection precludes the U.S. Army Corps of Engineers from issuing to the Appellant a permit to perform construction or issuing an after-the-fact permit for existing construction pending the outcome of the Appellant's appeal. The Appellant has now perfected its appeal by filing the supporting data and information required by the Department's implementing regulations. The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the Commission's consistency objections based on Grounds I and II. To make the determination that the proposed activity

is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Puerto Rico's coastal management program. See 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within thirty days of the publication of this notice and should be sent to Margo E. Jackson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Patria Custodio, Chairperson, Puerto Rico Planning Board, Minillas Governmental Center, De Diego Avenue, San Juan, Puerto Rico 00940-9985; and Annibal Irizarry, Esquire, McConnell, Valdez, Kelly, Sifre, Griggs & Ruiz-Suria, San Juan, Puerto Rico 00936.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the Puerto Rico Planning Board, McConnell, Valdez, Kelly, Sifre, Griggs & Ruiz-Suria and the Office of the Assistant General Counsel for Ocean Services, NOAA.

For Additional Information Contact: Margo E. Jackson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: April 27, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89-10729 Filed 5-3-89; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Claude A. White From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of dismissal.

On February 23, 1988, Claude A. White (Appellant) filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (Act), 16 U.S.C. 1451 *et seq.*, and the Act's pertinent implementing regulations, 15 CFR Part 930, Subpart H. The appeal arose from an objection by the South Carolina Coastal Council (State) to Appellant's consistency certification for a permit from the U.S. Army Corps of Engineers to fill 0.3 acres of wetlands in North Myrtle Beach, South Carolina. The appeal was stayed at the request of the parties until recently.

Subsequent to filing his appeal, Appellant submitted a modified proposal, which the State found consistent with its coastal zone management program. Appellant therefore requested that the appeal be dismissed. Accordingly, the Department of Commerce has dismissed the appeal for good cause pursuant to 15 CFR 930.128. Appellant is barred from filing another appeal from the State's objection to its consistency certification.

FOR FURTHER INFORMATION CONTACT: Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: April 27, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89-10730 Filed 5-3-89; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Development of Tillery Hill State Recreation Area, Patoka Lake, Orange County, IN

AGENCY: Louisville District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The project considered by the DEIS consists of a proposal by a team of private firms, named Patoka Partners, to build, operate, and maintain recreation facilities comprising a resort complex on Tillery Hill State Recreation area at Patoka Lake in Orange County, Indiana. The proposed facilities include a hotel and conference center, theme park, wild animal park, amphitheater, marina, golf courses, and other recreational facilities.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action or comments regarding significant issues that should be considered in the DEIS should be directed to: John F. Langowski, Jr., Colonel, Corps of Engineers, P.O. Box 59, Louisville, Kentucky 40201-0059. Phone: (502) 582-5601.

SUPPLEMENTARY INFORMATION:

Alternatives being considered are: no action, delayed development, and different scope of development.

The DEIS will cover a variety of issues including water quality, aquatic biology, terrestrial biology, regional socioeconomic structure, cultural resources, and recreation.

A scoping meeting will be held at 7:30 p.m. EST on May 16, 1989 at the French Lick Springs Resort Convention Hall in French Lick, Indiana. A public notice announcing the meeting will be distributed at least 15 days prior to the date of the meeting. The purpose of the meeting is to identify the significant issues to be analyzed in depth in the DEIS. The participation of the public and all interested government agencies is invited.

The Louisville District estimates that the DEIS will be released for public review in September 1989.

Date: April 14, 1989.

John F. Langowski, Jr.,

LTC, EN Commanding.

[FR Doc. 89-10736 Filed 5-3-89; 8:45 am]

BILLING CODE 3710-JB-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Delaware River Comprehensive Navigation Study, Modifying the Delaware River, Philadelphia to Sea Navigation Project

AGENCY: Philadelphia District, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action evaluates the need for and alternative methods of improving the navigation channel to accommodate commercial vessels transiting the Delaware River between Philadelphia, Pennsylvania and the mouth of the Delaware Bay. This need is based on current shipping problems resulting from delays in intermodal transfers, insufficient channel dimensions and other physical aspects affecting waterborne commerce. Identification of water and related land resource problems in the study area has evolved from prior studies, current investigations, and continuing public coordination.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DEIS should be addressed to Mr. Jerry Pasquale, (215) 597-6840, U.S. Army Corps of Engineers, CENAP-PL-E, U.S. Custom House, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106-2991.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The proposed objective will be to improve the handling of bulk commodity products, which account for the majority of ship cargoes using this waterway. These commodities, which include crude oil, coal and iron ore, are currently shipped in partially loaded vessels, due to draft restrictions. Consideration is being given to both full width deepening and providing only a deeper inbound channel lane since the majority of benefits come from imports. Provision of a deeper channel would reduce or eliminate non-structural practices such as lightering and light loading, now in use by the restricted vessels. In addition, several users are likely to employ larger vessels if a deeper channel is provided.

b. A critical element in the development of any navigation study is the disposal of dredged material. Approximately 6 million cubic yards of material for the existing 40 feet deep channel project are annually dredged from the Delaware River between Philadelphia and the sea. Acquisition of disposal areas for the existing channel is now solely a federal responsibility. There are 8 active upland disposal areas for the Philadelphia to the sea project.

Additional dredged material disposal sites will be needed to adequately handle dredged material from the existing federal project past the year 2020.

Project deepening would further reduce the capacity of existing sites and accelerate the need for replacement sites. A secondary goal of this study is to upgrade present disposal areas and locate additional sites with sufficient capacity to handle deepening and maintenance dredging operations over the project's full 50 year project life (2000-2050).

c. Without the implementation of improvements for the Delaware River channel, the maximum draft of vessels using the waterway would be limited to the draft now accommodated. Existing channel dimensions reduce the economic efficiency of larger ships moving through this major commercial area. Crude and refined oil products are the highest volume commodity in United States freight trade and account for the overwhelming majority of tonnage moved in the Delaware River. The refineries located along the Delaware River account for 10 percent of the refinery capacity of the United States and provide petroleum products throughout the mid-Atlantic states. Approximately 30 percent of all crude oil that comes to the Delaware River facilities is lightered. In addition, about 50 percent of the crude oil vessels, 60 percent of the coal vessels and 80 percent of the iron ore vessels are partially loaded.

d. The study is being conducted in response to a resolution by the Committee on Public Works of the United States Senate, dated March 1, 1954 and a resolution by the Committee on Public Works of the House of Representatives, dated December 2, 1970.

2. Alternatives

a. Alternative measures to improve navigation in the study portion of the Delaware River include no action and full-width or partial-width channel deepening. Partial-width channel deepening would entail deepening the inbound lane, since the majority of vessels travel upstream loaded and downstream partially or completely unloaded. The range of depths currently considered for deepening is 41 to 46 feet at mean low water. In addition, channel bend widening is being considered to facilitate larger vessels now using the waterway. Non-structural measures such as the use of tides to increase available channel drafts and lightering are already employed and are being included to the maximum extent

practical in all channel modification schemes.

b. Additional dredged material disposal capacity will be required for maintenance of the existing project and any channel modifications for the 50 year project life. Alternative structural measures for increasing disposal capacity include raising dikes at existing sites, using sedimentation basins to reduce shoaling, acquisition of new upland sites, marsh/upland creation within the river and/or ocean/bay disposal. Non-structural alternatives include dewatering practices to facilitate greater consolidation of dredged material at existing sites, reusing dredged material and reducing dredging activities.

3. Scoping

a. Numerous study reports have been published since 1954 concerning all aspects of the proposed project. Evaluation of previously gathered data has initiated both Federal interest and local support. In addition to these reports, several reconnaissance studies were conducted to determine waterway problems and the Federal interest in further study.

b. It is anticipated that a scoping meeting will be held to solicit additional comments from appropriate Federal, State, and local agencies. Participation of the general public and other interested parties and organizations will initially be invited by means of newsletters. Based on the input of these agencies and the interested public, a decision on additional scoping meetings will be made.

c. The significant issues and concerns that have been identified include the potential impacts of the projects on aquatic and terrestrial biota, water quality, intertidal and shallow water habitats, wetlands, cultural resources, and economics.

4. Availability

It is estimated the DEIS will be released for public comment in April 1990.

Robert L. Callegari,
Chief, Planning Division.

[FR Doc. 89-10737 Filed 5-3-89; 8:45 am]
BILLING CODE 3710-GR-M

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) has submitted the following 21 public information collection packages to OMB for renewal under the Paperwork Reduction Act of 1980, Pub. L. No. 96-511. The packages cover management and procurement collections of information from management and operating contractors of DOE's government-owned contractor-operated (GOCO) facilities, offsite contractors, financial assistance recipients, grantees, and the public. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The listing for each package contains the following information: (1) Title of the information collection package; (2) Current OMB control number; (3) Type of respondents; (4) Estimated number of responses; (5) Estimated total burden hours, including recordkeeping hours, required to provide the information; (6) Purpose; and (7) Number of collections.

DATE AND ADDRESS: Comments regarding the information collection packages should be submitted to the OMB Desk Officer at the following address no later than June 5, 1989. Mr. Nicholas Garcia, DOE Desk Officer, Office of Management and Budget (OIRA), Room 3001, NEOB, Washington, DC 20503. (202) 395-3084. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed in this notice).

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

Andrew D. Eppelmann, Director of Management Systems Analysis (MA-513), U.S. Department of Energy, Washington, DC 20585, (202) 586-2296.

Package Title: Automatic Data Processing (ADP) Management.

Current OMB No: 1910-0100.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 676.

Estimated Total Burden Hours: 246,157.

Purpose: This information is required by the Department to assure that ADP Management resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 10 information and/or recordkeeping requirements.

Package Title: Construction and Project Management.

Current OMB No: 1910-0200.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 13,526.

Estimated Total Burden Hours: 478,058.

Purpose: This information is required by the Department to assure that Project Management resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 25 information and/or recordkeeping requirements.

Package Title: Environment, Safety and Health.

Current OMB No: 1910-0300.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 10,785.

Estimated Total Burden Hours: 965,051.

Purpose: This information is required by the Department to assure that Environment, Safety and Health resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 78 information and/or recordkeeping requirements.

Package Title: Financial Assistance and Incentives.

Current OMB No: 1910-0400.

Type of Respondents: Grantees, assistance recipients, and contractors.

Estimated Number of Responses: 74,398.

Estimated Total Burden Hours: 708,009.

Purpose: This information is required by the Department to assure that Financial Assistance and Incentives resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 66 information and/or recordkeeping requirements.

Package Title: Financial Management.

Current OMB No: 1910-0500.

Type of Respondents: DOE Management and Operating (GOCO) contractors, offsite contractors, grantees, and financial assistance recipients.

Estimated Number of Responses: 25,764.

Estimated Total Burden Hours: 776,281.

Purpose: This information is required by the Department to assure that Financial Management resources and requirements are managed effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 51 information and/or recordkeeping requirements.

Package Title: Industrial Relations.

Current OMB No: 1910-0600.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 1,631.

Estimated Total Burden Hours: 33,683.

Purpose: This information is required by the Department to assure that Industrial Relations resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 124 information and/or recordkeeping requirements.

Package Title: In-house Energy Management.

Current OMB No: 1910-0700.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 285.

Estimated Total Burden Hours: 11,402.

Purpose: This information is required by the Department to assure that In-house Energy resources are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains three information and/or recordkeeping requirements.

Package Title: Legal.

Current OMB No: 1910-0800.

Type of Respondents: DOE Management and Operating (GOCO) contractors and potential or previous DOE employees.

Estimated Number of Responses: 2,381.

Estimated Total Burden Hours: 16,638.

Purpose: This information is required by the Department to assure that Legal resources and requirements are managed efficiently and effectively; to exercise oversight of DOE contractors and grantees in the area of inventions, and employees and former employees in the area of conflicts of interest. The package contains 11 information and/or recordkeeping requirements.

Package Title: Nuclear Materials.

Current OMB No: 1910-0900.

Type of Respondents: DOE Management and Operating (GOCO) contractors, offsite contractors.

Estimated Number of Responses: 12,302.

Estimated Total Burden Hours: 435,395.

Purpose: This information is required by the Department to assure that Nuclear Materials resources and requirements are managed efficiently; and to exercise management oversight of DOE contractors and grantees. The package contains 106 information and/or recordkeeping requirements.

Package Title: Personal Property.

Current OMB No: 1910-1000.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 8,881.

Estimated Total Burden Hours: 548,974.

Purpose: This information is required by the Department to assure that Personal Property resources and requirements are managed efficiently; and to exercise management oversight of DOE contractors and grantees. The package contains 72 information and/or recordkeeping requirements.

Package Title: Power Marketing Administrations.

Current OMB No: 1910-1200.

Type of Respondents: DOE Management and Operating (GOCO) contractors, offsite contractors, grantees, public and private utilities, and the general public.

Estimated Number of Responses: 123,542.

Estimated Total Burden Hours: 632,253.

Purpose: This information is required by the Department to assure that Power Marketing resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors, grantees, public and private utilities, and the general public. The package contains 110 information and/or recordkeeping requirements.

Package Title: Printing Management.

Current OMB No: 1910-1300.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 289.

Estimated Total Burden Hours: 4,208.

Purpose: This information is required by the Department to assure that Printing Management resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 11 information and/or recordkeeping requirements.

Package Title: Program Management.

Current OMB No: 1910-1400.

Type of Respondents: DOE Management and Operating (GOCO) contractors, offsite contractors.

Estimated Number of Responses: 100,417.

Estimated Total Burden Hours: 496,420.

Purpose: This information is required by the Department to assure that Program Management resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 74 information and/or recordkeeping requirements.

Package Title: Public Affairs.

Current OMB No: 1910-1500.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 241.

Estimated Total Burden Hours: 3,892.

Purpose: This information is required by the Department to assure that

Audiovisual-Publications resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains eight information and/or recordkeeping requirements.

Package Title: Real Property.

Current OMB No: 1910-1600.

Type of Respondents: DOE Management and Operating (GOCO) contractors, offsite contractors.

Estimated Number of Responses: 865.

Estimated Total Burden Hours: 49,475.

Purpose: This information is required by the Department to assure that Real Property resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 10 information and/or recordkeeping requirements.

Package Title: Records and Administration.

Current OMB No: 1910-1700.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 3,112.

Estimated Total Burden Hours: 8,783.

Purpose: This information is required by the Department to assure that Records resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains five information and/or recordkeeping requirements.

Package Title: Safeguards and Security.

Current OMB No: 1910-1800.

Type of Respondents: DOE Management and Operating (GOCO) contractors, offsite contractors.

Estimated Number of Responses: 168,428.

Estimated Total Burden Hours: 879,916.

Purpose: This information is required by the Department to assure that Safeguards and Security resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 64 information and/or recordkeeping requirements.

Package Title: Telecommunications.

Current OMB No: 1910-1900.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 23,546.

Estimated Total Burden Hours: 26,195.

Purpose: This information is required by the Department to assure that Telecommunications resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package

contains 16 information and/or recordkeeping requirements.

Package Title: Traffic Management.

Current OMB No: 1910-2000.

Type of Respondents: DOE Management and Operating (GOCO) contractors, offsite contractors.

Estimated Number of Responses: 101.

Estimated Total Burden Hours: 24,654.

Purpose: This information is required by the Department to assure that Traffic Management resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains four information and/or recordkeeping requirements.

Package Title: Travel.

Current OMB No: 1910-2100.

Type of Respondents: DOE Management and Operating (GOCO) contractors.

Estimated Number of Responses: 8,590.

Estimated Total Burden Hours: 56,305.

Package Title: Automatic Data Processing (ADP) Management.

Purpose: This information is required by the Department to assure that Travel resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 11 information and/or recordkeeping requirements.

Package Title: Procurement (formerly Department of Energy Acquisition Regulations—DEAR 970).

Current OMB No: 1910-4100.

Type of Respondents: DOE Management and Operating (GOCO) contractors, offsite contractors.

Estimated Number of Responses: 70,592.

Estimated Total Burden Hours: 2,094,274.

Purpose: This information is required by the Department to assure that Procurement resources and requirements are managed efficiently and effectively; and to exercise management oversight of DOE contractors and grantees. The package contains 62 information and/or recordkeeping requirements.

Dated: April 27, 1989.

Vito A. Magliano,

Deputy Assistant Secretary for Human Resource Management.

FR Doc. 89-10679 Filed 5-3-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Small and Disadvantaged Business Utilization

Plan for the Target Industry Categories Under the Small Business Competitiveness Demonstration Program

AGENCY: Department of Energy.

ACTION: Notice of Department of Energy's (DOE) plan for the Target Industry Categories (TIC) under the Small Business Competitiveness Demonstration Program.

SUMMARY: The DOE has concluded its consultation with the Small Business Administration (SBA) of its plan for the Small Business Competitiveness Demonstration Program. The plan lists the selected TICs with limited small business participation; the incremental goals for the TICs; and the efforts that DOE will undertake to increase small business procurements.

DATE: Comments must be received by June 5, 1989.

ADDRESS: Address comments to the Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Energy, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Roy Chavez, Office of Small and Disadvantaged Business Utilization (MA-41), U.S. Department of Energy, Washington, DC 20585, (202) 586-8219.

SUPPLEMENTARY INFORMATION: The Business Opportunity Development Act of 1988 (Pub.L. 100-656) requires that nine agencies, including the Department of Energy, conduct a Small Business Competitiveness Demonstration Program. The Program initially suspends small business set-asides in four industries in which small business have a disproportionately large share of Federal procurement: Construction, architect-engineering services, refuse collection services and non-nuclear ship repair. Simultaneously, participating agencies must select ten other industries with significant purchasing volumes and a history of low small business participation. In those industries, the agencies must develop 4-year plans to increase acquisitions from small businesses. In accordance with SBA guidance, the DOE developed the plan below. The selection of the ten industries included consideration of field recommendations. The selection relied on product and service code historical data which was then correlated with Standard Industrial Classification codes. The 4-year goals were set with the advice of field

procurement officials and small business specialists.

Berton J. Roth,
Deputy Assistant Secretary for Procurement and Assistance Management.

Small Business Competitiveness Demonstration Program U.S. Department of Energy Implementation Plan

The Department of Energy (DOE) has identified the following Target Industry Categories (TIC) for enhanced small business participation:

| SIC | Product or Service | Percent SB Contracts ¹ |
|------|---|-----------------------------------|
| 8731 | AG13 R&D Energy-Coal-Advanced Development..... | 2.7% |
| 8731 | AZ11 R&D/Other Research & Development-Research..... | 0.4 |
| 8731 | AG83 R&D/Conservation of Energy-Advanced Development..... | 0.9 |
| 8731 | AG93 R&D/Other Energy-Advanced Development..... | 0.9 |
| 8731 | R415 Technology Sharing/Utilization Services..... | 3.1 |
| 4959 | F108 Hazardous Substance Removal Support..... | 0.08 |
| 8742 | R405 Operations Research Services..... | 3.6 |
| 8732 | R419 Educational Services..... | 8.3 |
| 3823 | 7042 Mini & Micro Computer Control Devices..... | 6.8 |
| 3825 | 6625 Electrical Electronic Measuring Instruments..... | 6.2 |

¹ Average over 24 months; i.e. FY 1987 and 1988.
² Hazardous substances were considered not to be within SIC 4953.

TARGETED INDUSTRIES GOALS

| SIC | Prod or serv. | FY 1989, percent | FY 1990, percent | FY 1991, percent | FY 1992, percent |
|------|---------------|------------------|------------------|------------------|------------------|
| 8731 | AG13..... | 2.5% | 2.7% | 3.0% | 3.5% |
| 8731 | AZ11..... | 0.5 | 0.8 | 1.5 | 2.0 |
| 8731 | AG83..... | 2.0 | 2.5 | 4.5 | 6.0 |
| 8731 | AG93..... | 1.0 | 1.3 | 1.8 | 2.5 |
| 8731 | R415..... | 3.2 | 4.8 | 6.9 | 9.0 |
| 4959 | F108..... | 0.5 | 0.8 | 1.5 | 2.0 |
| 8742 | R405..... | 3.0 | 3.5 | 4.8 | 6.0 |
| 8732 | R419..... | 6.5 | 7.5 | 9.5 | 11.0 |
| 3823 | 7042..... | 6.7 | 7.0 | 7.8 | 9.0 |
| 3825 | 6625..... | 6.5 | 7.0 | 8.0 | 9.5 |

Policy and Implementation

The DOE will undertake various measures to promote the attainment of the goals in the underutilized categories. OSDBU will distribute source information from the Procurement Automated Source System (PASS) to the DOE organizations contracting for the particular categories. Minority small business sources will be requested from the Minority Business Development Agency's PROFILE system and distributed to contracting activities, to the extent that it is not redundant with PASS. The DOE will publish in the *Commerce Business Daily* "Sources Sought" notices for the ten categories.

The results of this effort, too, will be distributed to affected organizations.

The Department's participation in the Demonstration Program will be prominently noted in our participation in trade fairs, conferences, and other meetings for small businesses. Any new publications, such as revisions of our "Doing Business with the Department of Energy," will feature our participation in the program. These efforts are in addition to this announcement soliciting public comment on the agency's program in the *Federal Register*.

Procurement requests bearing one of the selected SIC codes will receive special consideration. Where

appropriate, 8(a) contracts may be initiated. Otherwise, if Federal Acquisition Regulation criteria are met, the requirement will be set aside for small business. Where there are insufficient small business sources, the contracting officer must make such a determination in writing with concurrence at one level above the contracting officer before the requirement can be processed for full and open competition.

For negotiated procurements in the targeted industries, the contracting officer will be required to include a business evaluation factor which provides consideration for small

businesses submitting a proposal, or for large businesses which propose joint ventures or other teaming arrangements with small businesses. On multiple award Program Research and Development Announcements, one or more awards, where appropriate, may be set aside for small R&D businesses (four of the targeted industry categories are in research and development).

Broad agency announcements which may draw participation in targeted industries will be encouraged to include a preference for small businesses in the evaluation criteria. In the procurement of other industries, small business specialists and contracting officers will be encouraged to look for break out opportunities of significant elements of larger procurements which might be set aside for 8(a) or small business in the targeted industries.

The Department will emphasize the targeted industries program through the training of its contracting staff. Training sessions for this program were held in Las Vegas, Nevada, on March 1-2, 1989, and in Washington, DC, on March 15.

This plan is effective upon publication in the *Federal Register*

[FR Doc. 89-10680 Filed 5-3-89; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Amendment to the Proposal to Readopt the 1987 Wholesale Power Rates

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of amended extension of 1987 Wholesale Power Rate Proposal; opportunity for public review and comment.

SUMMARY: After publication of BPA's proposal to readopt its 1987 Wholesale Power Rates (54 FR 7834), BPA experienced deviations from expected weather and water conditions. These changes caused BPA to reassess the analysis supporting the proposal resulting in a delay from the previous schedule.

The reassessment is complete, and BPA has determined that the changes in expectations have not significantly affected its determination that current wholesale power rate schedules will produce sufficient revenue for BPA to meet its statutory requirements and financial objectives for Fiscal Years (FY) 1990 and 1991. Therefore, BPA continues to propose to extend its 1987 rates by readopting its 1987 rate schedules, with a modified Cost Recovery Adjustment Clause, as its 1989 wholesale power rate

schedules to be effective through FY 1990 and 1991.

Because of the delay, BPA has revised the previous schedule of events. Minor numerical revisions have also been made in the formula for the Cost Recovery Adjustment Clause based on revisions in the revenue forecast. These changes are described below.

ADDRESSES: Written comments by participants should be submitted by May 31, 1989, but will be accepted until the close of all hearings or as otherwise ordered by the Hearings Officer. All previous requirements of the *Federal Register* Notice continue unchanged. Comments should be submitted to the Public Involvement Manager—ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Cunningham Byrnes at the above address or by phone at 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

- Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE Irving Street, Portland, Oregon 97232, 503-230-4551.
- Mr. Robert N. Laffel, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.
- Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.
- Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.
- Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.
- Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109-1030, 206-442-4130.
- Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6225.
- Mr. Floyd Actis, Acting Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.
- Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

Amended Schedule. The following is the revised proposed schedule. A final

schedule will be established by the Hearing Officer at the Prehearing Conference.

- May 1, 1989..... Initial studies available at BPA's Public Information Center, 905 NE 11th, 1st Floor, Portland, Oregon.
- May 8, 1989..... Deadline for interventions to be filed with Hearing Clerk at the address listed under Procedural Information below.
- May 8, 1989..... Technical Session to discuss studies and testimony.
- May 11, 1989... 9 a.m. deadline for filing and serving opposition to all intervention requests.
- May 12, 1989... Prehearing Conference to set schedule and act on petitions to intervene and motions.
- May 31, 1989... Participants' written comments due.
- No Later Than July 31, 1989. Final Record of Decision.

Amendment to the Cost Recovery Adjustment Clause. Due to the change in the revenue forecast, there are several changes in the numeric values in the formula of the Cost Recovery Adjustment Clause. In addition some clarification changes have also been made. All changes are in section III.C.5. of the General Rate Schedule Provisions. The changes are specified below followed by a revised complete section.

(a) III.C.5.b.(2)
printed as: " * * * obtain the adjusted FY 1990 net revenues. If adjusted FY 1990 * * * "

change to: " * * * obtain the adjusted FY 1990 revenues. The adjusted FY 1990 revenues less FY 1990 expenses equals the adjusted FY 1990 net revenues. If adjusted FY 1990 * * * "

(b) III.C.5.c.(1)(a)
printed as: "CR1=absolute value of NR1, and is the cost recovery for Period 1."

change to: "CR1=absolute value of NR1 for Period 1."

(c) III.C.5.c.(1)(a)(i)
printed as: "If CR1 is greater than \$29.6 million * * * "

change to: "If CR1 is greater than \$29.7 million * * * "

(d) III.C.5.c.(1)(a)(i)
printed as: "(CR1+11.571)/13.721;"
change to: "(CR1+12.015)/13.899;"

(e) III.C.5.c.(1)(a)(ii)
printed as: "If CR1 is less than or equal to \$29.6 million * * * "

change to: "If CR1 is less than or equal to \$29.7 million * * * "

(f) III.C.5.c.(1)(a)(ii)
printed as: "CRAC%=CR1/9.859"

change to: "CRAC%=CR1/9.902"
(g) III.C.5.c.(1)(b)

printed as: "ACR1=The lesser of CR1 or \$125.6 million, or zero if rates were not adjusted as a result of a CRAC adjustment in Period 1."

change to: "ACR1=The lesser of CR1 or \$127.0 million; or equal to zero if rates were not adjusted, at the discretion of the Administrator, in Period 1."

(h) III.C.5.c.(1)(b)

printed as: "CR2=absolute value of NR2, and is the cost recovery for Period 2."

change to: "CR2=absolute value of NR2 for Period 2."

(i) III.C.5.c.(1)(b)(i)

printed as: "If CR2 is greater than \$32.8 million * * *

change to: "If CR2 is greater than \$33.1 million * * *

(j) III.C.5.c.(1)(b)(ii)

printed as: "(CR2 + 11.833)/14.876;"

change to: "(CR2 + 12.083)/15.056;"

(k) III.C.5.c.(1)(b)(ii)

printed as: "If CR2 is less than or equal to \$32.8 million * * *

change to: "If CR2 is less than or equal to \$33.1 million * * *

(l) III.C.5.c.(1)(b)(ii)

printed as: "CRAC%=CR2/10.936"

change to: "CRAC%=CR2/11.014"

Complete Revised Section III.C.5. of the General Rate Schedule Provisions

5. Cost Recovery Adjustment Clause

a. Applicable Rate Schedules

The Cost Recovery Adjustment Clause (CRAC) applies to the Priority Firm Power (Exchange and Preference) (PF-89), Industrial Firm Power (IP-89), Variable Industrial Power (VI-87), Firm Capacity (CF-89), and New Resource Firm Power (NR-89) rate schedules. A percentage adjustment, labeled as CRAC%, is calculated for specific periods and applied to these rates by various formulas.

b. Evaluation and Adjustment Periods

There are two evaluation and adjustment periods for the Cost Recovery Adjustment Clause.

(1) Period 1

Period 1 is comprised of an evaluation period covering FY 1989 (October 1, 1988, through September 30, 1989) and an adjustment period of January 1, 1990, through September 30, 1990.

After September 30, 1989, BPA shall evaluate its preliminary, unaudited financial position by measuring its FY 1989 net revenues (BPA's total FY 1989 revenues less FY 1989 expenses).

Any resulting rate adjustment shall be at the Administrator's discretion, shall be upward only, and shall not be greater than 10.0 percent.

If the net revenues are less than zero for the evaluation period (FY 1989) as specified herein, BPA may adjust the applicable rates (PF-89, IP-89, VI-87,

CF-89, and NR-89) upward over an adjustment period beginning January 1, 1990, and ending September 30, 1990.

(2) Period 2

Period 2 is comprised of an evaluation period covering FY 1990 and an adjustment period of January 1, 1991, through September 30, 1991.

Any resulting rate adjustment shall be at the Administrator's discretion, shall be upward only, and shall not be greater than 10.0 percent.

After September 30, 1990, BPA shall evaluate its preliminary, unaudited financial position by measuring its FY 1990 net revenues (BPA's total FY 1990 revenues less FY 1990 expenses). The amount of any CRAC adjustment resulting from Period 1 evaluation shall be subtracted from FY 1990 revenues to obtain the adjusted FY 1990 revenues. The adjusted FY 1990 revenues less FY 1990 expenses equals the adjusted FY 1990 net revenues. If adjusted FY 1990 net revenues are less than zero for Period 2, BPA may adjust the applicable rates (PF-89, IP-89, VI-87, CF-89, and NR-89) upward over an adjustment period beginning January 1, 1991, and ending September 30, 1991.

c. Formulas for the Cost Recovery Adjustment Clause

(1) Adjustment Calculation

BPA shall determine the net revenue for each evaluation period using the following formulas:

(a) Period 1:

NR1=revenues-expenses

where:

revenues=total operating revenues (in millions of dollars) from the FCRPs Statements of Revenues and Expenses;

expenses=sum of total operating expenses, net interest expense, and any litigation settlement expenses or other extraordinary expenses shown separately on the FCRPs Statements of Revenues and Expenses (in millions of dollars);

NR1=FY 1989 net revenues (in millions of dollars).

If NR1 is zero or greater, then there will be no rate adjustment; and

CR1=zero

If NR1 is less than zero:

CR1=absolute value of NR1, for Period 1.

The following formulas apply for the calculation of the percent that the Cost Recovery Adjustment Clause could increase the applicable rates during January 1, 1990, through September 30, 1990:

(i) If CR1 is greater than \$29.7 million, then the CRAC% equals the lesser of:

(A) (CR1 + 12.015)/13.899; or

(B) 10.0 percent.

(ii) If CR1 is less than or equal to \$29.7 million, then, for PF, CF, and NR rate schedules (IP and VI are not adjusted):

CRAC%=CR1/9.902

(b) Period 2:

NR2=(revenues-ACR1)-expenses

where:

NR2=Adjusted FY 190 net revenues

(in millions of dollars); and

ACR1=The lesser of CR1 or \$127.0 million; or equals zero if rates were not adjusted, at the discretion of the Administrator, in Period 1.

If NR2 is zero or greater, then there will be no rate adjustment.

If NR2 is less than zero, then:

CR2=absolute value of NR2 for Period 2.

The following formulas apply for the calculation of the percent that the Cost Recovery Adjustment Clause could increase the applicable rates during January 1, 1991, through September 30, 1991:

(i) If CR2 is greater than \$33.1 million, then the CRAC% equals the lesser of:

(A) (CR2 + 12.083)/15.056; or

(B) 10.0 percent.

(ii) If CR2 is less than or equal to \$33.1 million, then, for PF, CF, and NR rate schedules (IP and VI are not adjusted):

CRAC%=CR2/11.014

d. Application to Irrigation Discount

In addition to the direct application of the cost recovery adjustment percentage (CRAC%) to the irrigation discount, an additional adjustment shall be made so that irrigation loads are not disproportionately affected by a 9-month adjustment period as compared to a 12-month adjustment period. The direct and additional adjustments are reflected in the following formula:

Adjusted Irrigation Discount (in mills per kilowatthour)

=4.6*(1+CRAC%/100)+(0.046*

CRAC%)

where:

4.6=Irrigation discount applicable to PF-89 and NR-89, in mills per kilowatthour; and

0.046=adjustment to account for the disproportionate impact of CRAC on irrigation loads, in mills per kilowatthour per percentage CRAC adjustment.

e. Cost Recovery Adjustment Clause Implementation Process

(1) Within 30 days after the end of FY 1989 and within 30 days after the end of FY 1990, BPA shall make an initial calculation to identify the preliminary, unaudited net revenues.

(2) On or about November 1 of each of the years 1989 and 1990, BPA shall notify interested persons and the purchasers under each applicable rate schedule of BPA's initial findings

concerning the net revenues for the evaluation period.

(a) If no adjustment is required, or if the Administrator waives implementation of an adjustment, BPA shall state in the notice the basis for its decision, and no further process will be required.

(b) If BPA determines that an adjustment to applicable rates is required, BPA shall state in the notice the amount of the adjustment, the calculation of the adjustment, and the resulting level of the adjustment to each applicable rate schedule. The notice shall also contain the data and assumptions prepared and relied upon by BPA, with references to additional documentation, if any, prepared and relied upon by BPA. Such documentation, if nonproprietary and/or nonprivileged, shall be available upon request unless unduly burdensome. The notice shall also contain the tentative schedule for the remainder of the implementation process.

(3) On or about November 6, 1989, and November 5, 1990, BPA shall conduct a public meeting in which interested persons and purchasers under each applicable rate schedule may seek off-the-record clarification, calculation, and application of the adjustment amount to specific rate schedules. For the purpose of further mailings, a list of the names and addresses of interested persons and purchasers (hereafter referred to as "mailing list") shall be compiled at this meeting.

(4) On or about November 10, 1989, and November 9, 1990, purchasers under each applicable rate schedule may submit information requests to BPA regarding the adjustment. The requests shall also be mailed to all persons on the mailing list. BPA shall respond to the requests within 2 working days of their receipt, or as soon as practicable if 2 days is insufficient time within which to respond.

(5) On or about November 17, 1989, and November 16, 1990, interested persons and purchasers under each applicable rate schedule may submit written comments to BPA regarding the adjustment. The comments shall also be mailed to all persons on the mailing list.

(6) On or about December 1, 1989, and November 30, 1990, commenters may respond to any comments.

(7) On or about December 1, 1989, and November 30, 1990, BPA may release, if available, revised preliminary unaudited net revenues and any resulting revised adjustment to applicable rate schedules.

(8) On or about December 15, 1989, and December 14, 1990, BPA shall conduct an on-the-record public comment forum in which interested

persons and purchasers under each applicable rate schedule may present oral comments to BPA.

(9) On or about December 20, 1989, and December 19, 1990, BPA shall notify interested persons and purchasers under each applicable rate schedule of the audited net revenue balance, the amount of the adjustment, the calculation of the adjustment, and the resulting level of the adjustment to each applicable rate schedule. The notice shall also contain the data and assumptions prepared and relied upon by BPA, with references to additional documentation, if any, prepared and relied upon by BPA.

(10) If there is a rate adjustment due the CRAC following the FY 1989 evaluation period, it shall be in effect from January 1, 1990, through September 30, 1990.

If there is a rate adjustment due to the CRAC following the FY 1990 evaluation period, it shall be in effect from January 1, 1991, through September 30, 1991.

Procedural Information. The information on procedural rules has not changed from the February notice except for the dates, but is summarized here for the convenience of those who may wish to participate. Potential parties and participants should also review the February 23, 1989, notice.

Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated in this notice. The petitions to intervene must be received by May 8, 1989. Those who have previously filed an intervention petition in this proceeding need not file again. Petitions should be addressed as follows: Honorable Dean F. Ratzman, Hearing Officer, c/o John Ciminello—APR, Hearing Clerk, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel/APR, P.O. Box 3621, Portland, Oregon 97208. Any opposition to a petition to intervene must be filed and served no later than 24 hours before the May 12, 1989, Prehearing Conference. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances on their petition.

BPA will prefile the studies and testimony of its witnesses on May 1, 1989. Copies will be available in the Public Information Center and will be mailed to all parties to the 1987 rate proceeding.

A Prehearing Conference will be held before the Hearing Officer at 9 a.m. on May 12, 1989, in the new BPA Hearing

Room, 1002 NE. Holladay, second floor, Portland, Oregon. Registration for the Prehearing Conference will begin at 8:30 a.m. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs as are determined necessary and for expediting any necessary cross examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

Persons seeking to become parties should not wait until the prehearing conference to obtain copies of the studies. Rather, potential parties should obtain the studies as soon as they are available so that they are conversant with them at the time of the prehearing conference.

Parties appearing at the Prehearing Conference shall be required to state whether they will oppose BPA's rate proposal, provided that BPA will have first offered satisfactory assurance that no substantive or procedural precedent shall arise by virtue of the substance, manner, or form of BPA's, or any other party's action in connection with the rate proposal, and that the extended rates suffer the same entire or partial legality as the 1987 wholesale power rates. The May 8, 1989, technical session is provided to assist parties in their evaluation of BPA's proposal.

Supporting Studies. The studies that have been prepared to support the proposed rates will be available for examination on May 1, 1989, at BPA's Public Information Center, BPA Headquarters Building, first floor, 905 NE. 11th, Portland, Oregon. The studies will be mailed to all parties to BPA's 1987 rate case and will be available at the Prehearing Conference. The studies are:

1. Revenue Requirement Study and Technical Documentation

2. Revenue Forecast Study

To request either of the studies by telephone, call BPA's document request line: 800-841-5867 for Oregon; 800-624-9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503-230-3478. Please request the study by its above title. Also state whether you require the accompanying technical documentation; otherwise the study alone will be

provided. (For example, ask for the "Revenue Requirement Study and Technical Documentation.")

Issued in Portland, Oregon, on April 14, 1989.

James J. Jura,
Administrator.

[FR Doc. 89-10864 Filed 5-2-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF88-175-001, et al.]

The Procter & Gamble Paper Products Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. The Procter & Gamble Paper Products Co.

[Docket No. QF88-175-001]

April 26, 1989.

On October 26, 1988¹ as amended on April 12, 1989, The Procter & Gamble Paper Products Company (Applicant), of 1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oxnard, California. Steam and thermal energy recovered from the facility will be used in manufacturing of paper products. The primary energy source will be natural gas.

The original application was filed on December 28, 1987 and was granted on April 26, 1988 (43 FERC ¶ 62,071 (1988)). The recertification is requested due to addition of a combustion turbine generator and associated heat recovery steam generator. The net electric power production capacity of the facility will increase from 20 MW to 66.77 MW. Installation of the new facilities began in July 1988.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

¹ This filing was incorrectly noticed under Docket No. QF89-23-000. See *Federal Register* notice published on November 14, 1988 (53 FR 45,816 (1988)).

2. Allegheny Generating Co.

[Docket Nos. EL88-8-001 and ER88-533-001]

April 27, 1989.

Take notice that on April 3, 1989, Allegheny Generating Company (AGC) tendered for filing its refund report pursuant to the Settlement Agreement filed on January 3, 1989 in the above dockets.

Comment date: May 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Connecticut Light and Power Co.

[Docket No. ER85-720-012]

April 27, 1989.

Take notice that on April 4, 1989, Connecticut Light and Power Company tendered for filing its refund report in compliance with the Commission's order issued February 16, 1989.

Comment date: May 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket Nos. ER87-72-004 and ER87-73-004]

April 27, 1989.

Take notice that on March 28, 1989, Orange and Rockland Utilities, Inc. (O&R) tendered for filing its refund report pursuant to the Commission's letter dated February 16, 1989.

Comment date: May 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corp.

[Docket No. EL89-22-000]

April 28, 1989.

Take notice that on April 18, 1989, Wisconsin Public Service Corporation tendered for filing revised rate schedules and answers to requests for further information contained in the Commission's letter in this docket of March 3, 1989. Those requests related to the Company's relationship with Dolores Bench Limited partnership (DBLP), its proposal to recover mining investments made by DBLP, coal contract buyouts and the Company's proposal to verify savings before passing mining and buyout costs through the fuel clause.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Power Co.

[Docket Nos. ER82-553-005 and ER82-554-005]

April 28, 1989.

Take notice that on April 24, 1989, Ohio Power Company (OPCo) tendered for filing a Revised Compliance Filing pursuant to the Commission's Order

issued February 22, 1989 in the above referenced dockets.

Copies of the revised filing were served upon Wheeling Power Company, the Public Service Commission of West Virginia, the affected municipal customers and the Public Utilities Commission of Ohio.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Co.

[Docket No. ER88-83-005]

April 28, 1989.

Take notice that on April 13, 1989, Southern California Edison Company (Edison) tendered for filing its Report of Refunds made in accordance with the Settlement Agreement between Edison and the City of Vernon accepted by the Commission's order of February 17, 1989.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Montana Power Co.

[Docket No. ER89-343-000]

April 28, 1989.

Take notice that on April 13, 1989, the Montana Power Company (Montana) tendered for filing a revised Index of Purchasers, identified as Twelfth Revised Sheet No. 10 under FERC Electric Tariff, 2nd Revised Volume No. 1, which has been revised to show the addition of (1) Seattle City Light, (2) Colockum Transmission Company, (3) Public Utility District No. 1 of Snohomish County, and (4) City of Vernon. Also tendered for filing were summaries of sales made under the Company's FERC Electric Tariff, 2nd Revised Volume No. 1, during January 1988 through June 1988 with cost justifications for the rates charged.

Montana requests the following effective dates for the service agreements: (1) Seattle City Light (March 28, 1989), (2) Colockum Transmission Company (November 1, 1988), (3) Public Utility District No. 1 of Snohomish County (December 1, 1987), and (4) City of Vernon (December 10, 1985), and therefore requests waiver of the Commission's notice requirements to allow the agreements to be effective on the dates indicated above.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power & Light Co.

[Docket No. ER89-359-000]

April 28, 1989.

Take notice that on April 20, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amendment dated February 6, 1989 to the wholesale power agreement between the Village of Belmont and WPL. WPL states that this amendment revises the previous agreement between the two parties which was dated November 18, 1975, and designated Rate Schedule 110 by the Commission.

The purpose of this amendment is to lengthen the notice period required for termination.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Village of Belmont and the Wisconsin Public Service Commission.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power & Light Co.

[Docket No. ER89-360-000]

April 28, 1989.

Take notice that on April 20, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amendment to the wholesale power agreement dated February 27, 1989, between Village of Benton and WPL. WPL states that this amendment revises the previous agreement between the two parties which was dated October 22, 1985, and is designated Rate Schedule No. 136 by the Commission.

The purpose of this amendment is to lengthen the notice period required for termination.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Village of Benton and the Wisconsin Public Service Commission.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Co.

[Docket No. ER89-361-000]

April 28, 1989.

Take notice that Florida Power & Light Company (FPL), on April 20, 1989, tendered for filing Amendment Number Two to Short Term Agreement to Provide Power and Energy By Florida Power & Light Company To Utility Board of the City of Key West, Florida and Cost Support Schedules C, D, E, F, and G (together with Cost Support Schedule F

Supplements) which support the rates for sales under Amendment Number Two To Short Term Agreement.

Under Amendment Number Two, FPL and Utility Board of the City of Key West have agreed to revise and amend the Short Term Agreement to allow flexibility in pricing of the capacity reservation charge. FPL respectfully requests that the proposed Amendment and Cost Support Schedules C, D, E, F, and G (together with Cost Support Schedule F Supplements) be made effective immediately. Accordingly to FPL, a copy of this filing was served upon the Utility Board of the City of Key West, Florida and the Florida Public Service Commission.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Co.

[Docket No. ER89-363-000]

April 28, 1989.

Take notice that on April 20, 1989, Northeast Utilities Company (NUSCO) tendered for filing a proposed rate schedule pertaining to a Letter Agreement dated April 7, 1989 between NUSCO, as Agent for the Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), and Bangor Hydro-Electric Company (Bangor).

NUSCO requests that the Commission waive its notice and filing regulations to the extent necessary to permit the Letter Agreement to commence effective November 1, 1987 and to terminate effective February 29, 1988.

NUSCO states that a copy of the rate schedule has been mailed or delivered to CL&P and WMECO, and to Bangor.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Co.

[Docket No. ER89-362-000]

April 28, 1989.

Take notice that on April 20, 1989, Northeast Utilities Service Company (NUSCO), acting as Agent for the Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO) tendered for filing proposed rate schedules pertaining to letter agreements (Agreements) with respect to capacity sales from various fossil units (Agreement A) and various gas turbine and fossil units (Agreement B) between NUSCO, as agent for CL&P and WMECO, and Massachusetts Municipal Wholesale Electric Company (MMWEC) dated as of November 19, 1984 and March 14, 1989, respectively.

NUSCO states that the rate schedules provide for sales to MMWEC of capacity and associated energy from CL&P's Montville Unit Nos. 5 and 6, Middletown Unit No. 4, and from various gas turbine units, together with related transmission service. Agreement A commenced on November 1, 1984 and will be terminated with twenty-eight (28) days written notice. Agreement B commenced on April 23, 1986 and terminated October 31, 1986.

NUSCO requests that the Commission waive its notice and filing regulations to the extent necessary to permit the rate schedules to become effective as of November 1, 1984 and April 23, 1986, respectively.

NUSCO also submits for filing notices of termination for Agreements A and B and requests that said termination be effective April 14, 1989 and October 31, 1986, respectively.

NUSCO states that a copy of this filing has been mailed to MMWEC, Ludlow, Massachusetts.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Co.

[Docket No. ER89-364-000]

April 28, 1989.

Take notice that on April 20, 1989, Arizona Public Service Company (APS) tendered for filing an Economy Energy Interchange Agreement (Agreement) between APS and the Arizona Power Authority (APA) executed on April 10, 1989. The Agreement is intended to supercede service provided pursuant to APS FERC Rate Schedule No. 60.

APS requested that this Agreement become effective 60 days from the date of filing with FERC.

This Agreement provides that Economy Energy sales by APS to APA shall be priced at one of the following rates: (a) A ceiling rate concept based in part on the fixed costs associated with facilities used to produce the required energy; or (b) a selling price based on 120 percent of cost to produce such energy.

Copies of this filing have been served upon APS and the Arizona Public Corporation Commission.

Comment date: May 15, 1989, in accordance with Standard Paragraph end of this notice.

15. New York State Electric & Gas Corp.

[Docket No. ER89-366-000]

April 28, 1989.

Take notice that on April 21, 1989, New York State Electric & Gas Corporation (NYSEG) tendered for filing

as an initial rate schedule a contract dated March 1, 1989 between NYSEG and the County of Niagara, a municipal corporation of the State of New York, (Niagara County). The contract provides for Niagara County to pay a charge to NYSEG for the use of its facilities to deliver hydroelectric power and energy sold by Niagara County to its residential customers, equal to the charges that would have been billed to such customers under NYSEG's appropriate residential electric rate schedule on file with the New York State Public Service Commission less NYSEG's fuel and purchased power costs reflected in such rate schedule. Service under this agreement shall commence on July 1, 1989.

NYSEG states that copies of this filing have been served by mail upon Niagara County, the New York State Public Service Commission, and the power Authority of the State of New York, from whom Niagara County is purchasing the hydroelectric power and energy to be sold by Niagara County to its customers.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Power & Light Co.

[Docket No. ER89-367-000]

April 28, 1989.

Take notice that on April 21, 1989, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated March 7, 1989, between the Village of Hazel Green and WPL. WPL states that this new wholesale power agreement supercedes the previous agreement between the two parties which was dated September 25, 1981, and designated Rate Schedule No. 91 by the Commission.

The purpose of this new agreement is to provide for terms of service on a similar basis to the terms of service for other wholesale customers.

WPL requests an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Village of Hazel Green and the Wisconsin Public Service Commission.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Central Hudson Gas & Electric Corp.

[Docket No. ER89-368-000]

April 28, 1989.

Take notice that Central Hudson Gas

& Electric Corporation (Central Hudson), on April 21, 1989, tendered for filing as a rate schedule an executed agreement dated January 5, 1989 between Central Hudson and the New York Power Authority. The proposed rate schedule provides for Electric Transmission Service and Standby Electric Service for generation associated with NYPA's Ashokan Hydro Electric Generating Plant.

The rate schedule provides for a monthly transmission charge of \$1.32 per kilowatt and a standby charge of \$7.84 per kilowatt per month during the summer and winter peak periods.

Central Hudson states that a copy of its filing was served on NYPA.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10624 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM-89-3-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 28, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on April, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective May 1, 1989:

Twentieth Revised Sheet No. 16B

Tenth Revised Sheet No. 16B1

Tenth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets modify and supplement

Columbia's previous filings in Docket No. RP88-187 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to modify its earlier filings to permit it to flow through revised take-or-pay and contract reformation costs from (i) Texas Eastern Transmission Corporation pursuant to the Federal Energy Regulatory Commission's order issued on January 31, 1989 in Docket Nos. RP88-80 and RP88-251, an order issued March 24, 1989 in Docket No. TM89-3-17 (formerly RP88-80) and an order issued March 31, 1989 in Docket No. TM89-4-17 (formerly RP88-251), (ii) Texas Gas Transmission Corporation pursuant to the Commission's order issued on March 1, 1989 in Docket No. TM89-2-18 (formerly RP88-230), (iii) Transcontinental Gas Pipe Line Corporation pursuant to a filing made on December 30, 1988 in Docket No. RP88-68-009 which was accepted by Commission order dated March 23, 1989, and (iv) Panhandle Eastern Pipe Line Company pursuant to a filing made on January 30, 1989, in Docket No. TM89-2-28 (formerly RP88-240).

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and upon each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88-187-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions of protests should be filed on or before May 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10625 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C189-376-000]

Fina Oil and Chemical Co., Petrofina Delaware, Incorporated, and TOC-Gulf Coast Inc.; Application for a Blanket Certificate with Pregranted Abandonment

April 27, 1989.

Take notice that on April 20, 1989, Fina Oil and Chemical Company, Petrofina Delaware, Incorporated, and TOC-Gulf Coast Inc. (Fina) of 8350 N. Central Expressway, #1866, Dallas, Texas 75206, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize sales in interstate commerce for resale of all NGA gas Fina may purchase including gas purchased from producers, marketers and interstate pipelines with offsystem sales certificates permitting such sales, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before May 8, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Fina to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10626 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-91-001]

Gasdel Pipeline System, Inc.; Filing

April 28, 1989.

Take notice that on April 24, 1989, Gasdel Pipeline System, Incorporated (Gasdel), tendered for filing to become

part of Gasdel's FERC Gas Tariff, Original Volume No. 1-4, First Revised Tariff Sheet Nos. 31, 32, 36, and 37.

Gasdel states that by Letter Order dated March 23, 1989, the Commission rejected Gasdel's February 28, 1989 filing which was made pursuant to the Commission's Final Rule at Docket Nos. RM88-14-001 and RM88-15-000 (Order No. 509). The above tariff sheets are filed to comply with the Letter Order and with Order No. 509. Gasdel states that under these tariff sheets it will reallocate firm transportation capacity, voluntarily relinquished pursuant to § 284.304(c) of the Commission's Regulations, on a first-come, first-served basis. Gasdel requests waiver of the Commission's Regulations in order that these tariff sheets may become effective on April 1, 1989.

Copies of this filing are on file with the Commission and are available for public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before May 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10627 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-5-4-000 and TM89-6-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

April 28, 1989.

Take notice that on April 24, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 containing changes in rates and other tariff provisions for effectiveness on February 1, 1989 and April 1, 1989, as indicated below:

A. Purchased Gas Cost Adjustments*First Revised Volume No. 1**For Effectiveness February 1, 1989:*

Substitute Twenty-Fourth Revised Sheet No. 7

For Effectiveness April 1, 1989:

Substitute Twenty-Fifth Revised Sheet No. 7

B. Tracking Adjustments for Effectiveness February 1, 1989*First Revised Volume No. 1*

Second Substitute Ninth Revised Sheet No. 7-A

Second Substitute Eighteenth Revised Sheet No. 8

| | |
|-----------------------------------|------------------------------|
| <i>First Revised Volume No. 2</i> | <i>Original Volume No. 2</i> |
|-----------------------------------|------------------------------|

| | |
|---|--|
| Substitute First Revised Sheet No. 5. | Second Substitute Eleventh Revised Sheet No. 27. |
| Substitute Second Revised Sheet No. 14. | Second Substitute First Revised Sheet No. 34. |
| | Second Substitute Second Revised Sheet No. 36. |
| | Second Substitute Ninth Revised Sheet No. 17. |
| | Substitute Second Revised Sheet No. 24. |

According to Granite State, the revised rates and other tariff changes are applicable to jurisdictional services rendered to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. It is said further that Granite State made an out-of-cycle purchased gas cost adjustment filing on February 1, 1989 and a regular quarterly purchased gas cost adjustment filing on March 13, 1989, for effectiveness on February 1 and April 1, 1989, respectively. In these prior filings, Granite State states that it reflected costs for gas purchased from Tennessee Gas Pipeline Company (Tennessee) and tracked charges for transportation services and fuel use factors for such services to reflect rates and tariff provisions that Tennessee had proposed in Docket No. RP88-228-000 for effectiveness on February 1, 1989.

Further, it is stated that Tennessee has submitted an Interim Settlement in Docket No. RP88-228-000 which, *inter alia*, if approved, will maintain Tennessee's rates and charges as of January 1, 1989 until October 31, 1989. According to Granite State, Tennessee is continuing to bill the rates and charges provided for in the Interim Settlement. As a result, Granite State's rates and tariff provisions, to the extent

they reflect and track Tennessee's proposed Docket No. RP88-228-000 rates and other tariff provisions, are overstated. According to Granite State the principal effect of the instant filing is to reverse the effect of Tennessee rates and charges in Docket No. RP88-228-000 which Granite State had reflected in its rates and charges in the two prior filings made on February 1, 1989 and March 13, 1989.

According to Granite State copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10628 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-27-002]

North Penn Gas Co; Compliance Filing

April 28, 1989.

Take notice that on April 25, 1989, North Penn Gas Company (North Penn) filed certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, in compliance with the Commission's order of April 7, 1989. North Penn proposes these tariff sheets be effective April 1, 1989.

North Penn requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective April 1, 1989.

North Penn states that copies of this filing have been mailed to each of its jurisdictional customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before May 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10629 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-262-004, CP89-917-001]

Panhandle Eastern Pipe Line Co.; Compliance Filing

April 28, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on April 25, 1989, tendered for filing the following revised tariff sheets in compliance with Ordering Paragraph (B) and (C) of the Commission's Order dated March 31, 1989:

First Substitute Second Revised Sheet No. 32-AC

First Substitute First Revised Sheet No. 32-BF
Second Substitute Second Revised Sheet No. 48-A

Second Substitute Second Revised Sheet No. 48-B

Panhandle states that copies of its filing have been served on all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10630 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-10-M

[Docket Nos. RP83-58-017]

Southern Natural Gas Co; Proposed Change in FERC Gas Tariff

April 28, 1989.

Take notice that on April 25, 1989, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets with a proposed date of April 1, 1989.

Southern states that the proposed tariff filing is being made in compliance with Ordering Paragraph (G) of the Federal Energy Regulatory Commission's (Commission) "Order Modifying and Approving Settlement" issued on March 23, 1989, in the above-captioned proceeding requiring Southern to file tariff sheets reflecting the applicability of the settlement rates to all entities served by Southern effective as of April 1, 1989.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before May 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10631 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-7-047 et al.]

Transcontinental Gas Pipe Line Corp., et al.; Filing of Pipeline Refund Reports

April 28, 1989.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before May 19, 1989. Copies of the respective

filings are on file with the Commission and available for public inspection.

Lois D. Cashell,
Secretary.

APPENDIX

| Filing Date | Company | Docket No. |
|---------------|---|---------------|
| 12/19/88..... | Transcontinental Gas Pipe Line Corporation. | RP87-7-048 |
| 3/13/89..... | Transcontinental Gas Pipe Line Corporation. | RP87-7-047 |
| 3/22/89..... | Texas Eastern Transmission Corporation. | CP-85-756-009 |
| 4/19/89..... | Williams Natural Gas Company. | RP86-68-012 |

[FR Doc. 89-10632 Filed 5-3-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products, Petition for Waiver of Furnace Test Procedures From Trane Co. (F-017)

The Department of Energy published a document in the *Federal Register* at 54 FR 15986, Apr. 20, 1989, concerning the above referenced "Petition for Waiver." The "Petition for Waiver" and the letter granting the "Application for Interim Waiver" issued to the Trane Co. were inadvertently omitted. This document corrects the error and sets forth the full text of the two letters.

Issued in Washington, DC, on April 27, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

April 12, 1989.

Mr. L.E. Chaump,

Vice President Engineering, The Trane Company, Troup Highway, Tyler, Texas 75711.

Dear Mr. Chaump: This is in response to your February 27, 1989, Application for Interim Waiver, from the Department of Energy (DOE) test procedures for furnaces when testing Trane's gas-fueled forced-air condensing furnace identified as TUC(-) and TDC(-) series.

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure regulations on September 26, 1980 [45 FR 64108] and November 26, 1986 [51 FR 42823]. These provisions allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments provide that an interim waiver from test procedures requirements will be granted by the Assistant Secretary for Conservation and Renewable Energy if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary for Conservation and Renewable Energy determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. § 430.27.

The Department finds that it would be desirable for public policy reasons to grant Trane's Application for Interim Waiver. Specifically, in those instances where DOE has granted a waiver for a similar product design, it is in the public's interest to have similar products tested and rated for energy consumption on a comparable basis.

Previous waivers for this type of timed blower delay control have been granted to the Coleman Company, Magic Chef Company, and Rheem Manufacturing Company. 50 FR 2710, January 18, 1985, 50 FR 41553, October 11, 1985, and 53 FR 48574, December 1, 1988, respectively.

Therefore, Trane's Application for an Interim Waiver requesting relief from the DOE test procedures for its TUC(-) series and TDC(-) series of condensing furnaces is granted.

Trane shall be permitted to test its TUC(-) series and TDC(-) series of condensing furnaces on the basis of the test procedures specified in 10 CFR Part 430, with the modification set forth below.

(i) Section 9.3.1 of ANSI/ASHRAE Standard 103-1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the

burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ± 0.01 inch of water gauge of the manufacturer's recommended on-period draft.

This interim waiver shall remain in effect for 180 days from the date of issuance or until the Department of Energy issues a determination on Trane's Petition for Waiver, whichever occurs first.

This interim waiver is based upon the prescribed validity of statements and allegations submitted by the applicant. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Sincerely,

Dr. John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

February 27, 1989.

Assistant Secretary, Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585

Gentlemen: This petition for waiver and interim waiver is submitted pursuant to Title 10 CFR 430.27. Waiver is requested from the condensing furnace test procedure found at Appendix N to Subpart B of Part 430. The Heat-Up Test procedure requires a 1.5 minute time delay between burner and blower-startup. Significant energy is lost during the delay period. Starting in April 1989, Trane will manufacture condensing furnaces having fixed timing controls which will activate the blower 0.5 minutes after burner start-up. These furnaces will include the TUC(-) upflow and TDC(-) downflow model families. These controls reduce losses by 1.6% to 2.0%, or approximately 20% of the total energy losses. The current procedures do not recognize such controls causing energy losses to be overstated. The petition requests that the true delay be used for more accurate representation of efficiency. Confidential supporting test data is available upon request.

An interim waiver is requested because it seems likely that our waiver will be granted. Similar waivers have been granted to Coleman, Magic Chef, and Rheem. All central furnace manufacturers known to Trane have been notified by letter of our application. A copy of the letter and a list of the manufacturers is attached.

Sincerely,

L.E. Chaump,

Vice President Engineering.

[FR Doc. 89-10681 Filed 5-3-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY**Water Quality Criteria****Availability of Documents**

[OW-FRL-3566-2]

AGENCY: Environmental Protection Agency.**ACTION:** Notice of final aquatic life ambient water quality criteria document.

SUMMARY: EPA announces the availability and provides a summary of the ambient aquatic life water quality criteria document for saltwater ammonia. These criteria are published pursuant to Section 304(a)(1) of the Clean Water Act. These water quality criteria may form the basis for enforceable standards.

Availability of Documents

This notice contains: (1) A summary of the final saltwater ammonia criteria document containing ambient water quality criteria for the protection of aquatic life and its uses (see Appendix A) and (2) responses to public comments (see Appendix B). Copies of the complete criteria document may be obtained from the National Technical Information Service (NTIS), 5282 Port Royal Road, Springfield, VA 22161 (phone number ((703) 487-4650). The NTIS publication order number for the document is given below. These documents are also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of the document are also available for review in the EPA Regional Office libraries. Copies of the document are not available from the EPA Office listed below. Requests sent to that office will be forwarded to NTIS or returned to the sender.

1. Ambient Water Quality Criteria for Ammonia (Saltwater) EPA 440/5-88-004; NTIS Number PB 88-.

FOR FURTHER INFORMATION CONTACT: Dr. Suzanne Marcy, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7144.

SUPPLEMENTARY INFORMATION:*Background*

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to

publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation.

EPA has periodically issued ambient water quality criteria beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under Section 307(a)(1) of the Clean Water Act. A criteria document for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was published on February 15, 1984 (49 FR 5831), completing the coverage of the 65 toxic pollutants listed under Section 307(a)(1).

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for dissolved oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on December 3, 1986 (51 FR 43665). Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were issued by EPA on December 3, 1986 (51 FR 43665). On March 2, 1987, (52 FR 6213), EPA announced the publication of revised ambient water quality criteria for selenium which updated criteria previously published in 1980. A final criteria document for chloride was published on May 26, 1988 (53 FR 19028) and for aluminum on August 30, 1988 (53 FR 33177); no previous criteria were issued for these substances.

Today EPA is announcing the availability of an ambient water quality criteria document for ammonia for the protection of saltwater aquatic organisms. A draft criteria document for saltwater ammonia was made available for public comment on October 8, 1987 (52 FR 37597). These final criteria were derived after consideration of all comments received, and following

analysis of additional data received after the draft document was published.

Dated: April 21, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

Appendix A—Summary of Water Quality Criteria for Ammonia (Saltwater)

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, saltwater aquatic organisms should not be affected unacceptably if the four-day average concentration of un-ionized ammonia does not exceed 0.035 mg/L more than once every three years on the average and if the one-hour average concentration does not exceed 0.233 mg/L more than once every three years on the average. Because sensitive saltwater animals appear to have a narrow range of acute susceptibilities to ammonia, this criterion will probably be as protective as intended only when the magnitudes and/or durations of excursions are appropriately small.

Criteria concentrations based on total ammonia for the pH range of 7.0 to 9.0, temperature range of 0 to 35 °C, and salinities of 10, 20 and 30 g/kg are provided in Tables 1 and 2 below. These values were calculated by Hampson's (1977) program of Whitfield's (1974) model for hydrolysis of ammonium ions in sea water.

Three years is the Agency's best scientific judgment of the average amount of time aquatic ecosystems should be provided between excursions. The ability of ecosystems to recover differ greatly.

Site-specific criteria may be established if adequate justification is provided. This site-specific criterion may include not only site-specific criteria concentrations, and mixing zone considerations (U.S. EPA, 1983b), but also site-specific durations of averaging periods and site-specific frequencies of allowed exceedences (U.S. EPA 1985b).

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires the selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria (U.S. EPA 1985b). Limited data or other considerations might make their use impractical, in which case one should rely on a steady-state model (U.S. EPA 1986).

Implementation

Water quality standards for ammonia developed from these criteria should specify use of environmental monitoring methods which are comparable to the analytical methods employed to generate the toxicity data base. Total ammonia may be measured using an automated idophenol blue method, such as described by Technicon Industrial Systems (1973) or U.S. EPA (1979) method 350.1. Un-ionized ammonia concentrations should be calculated using the dissociation model of Whitfield (1974) as programmed by Hampson (1977). This program was used to calculate most of the un-ionized values for saltwater organisms used in this document. Accurate measurement of sample pH is crucial in the calculation of the un-ionized ammonia fraction. The following equipment and procedures were used by EPA in the

ammonia toxicity studies to enhance the precision of pH measurements in salt water. The pH meter reported two decimal places. A Ross electrode with ceramic junction was used due to its rapid response time; an automatic temperature compensation probe provided temperature correction. Note that the responsiveness of a new electrode may be enhanced by holding it in sea water for several days prior to use. Two National Bureau of Standards buffer solutions for calibration preferred for their stability were (1) potassium hydrogen phthalate (pH 4.00) and (2) disodium hydrogen phosphate (pH 7.4). For overnight or weekend storage, the electrode was held in salt water, leaving the fill hole open. For daily use, the outer half-cell was filled with electrolyte to the fill hole and the electrode checked for stability. The electrode pair was calibrated once daily prior to measuring pH of samples; it was never recelibrated

during a series of measurements. Following calibration, the electrode was soaked in sea water, of salinity similar to the sample, for at least 15 minutes to achieve chemical equilibrium and a steady state junction potential. When measuring pH, the sample was initially gently agitated or stirred to assure good mixing at the electrode tip, but without entraining air bubbles in the sample. Stirring was stopped to read the meter. The electrode was allowed to equilibrate so the change in meter reading was less than 0.02 pH unit/minute before recording. Following each measurement, the electrode was rinsed with sea water and placed in fresh sea water for the temporary storage between measurements. Additional suggestions to improve precision of saltwater pH measurements may be found in Zirno (1975), Grasshoff (1983), and Butler et al. (1985).

TABLE 1.—WATER QUALITY CRITERIA FOR SALTWATER AQUATIC LIFE BASED ON TOTAL AMMONIA (MG/L) CRITERIA MAXIMUM CONCENTRATIONS

| | Temperature (°C) | | | | | | | |
|--------------------|------------------|-----|-----|-----|------|------|------|------|
| | 0 | 5 | 10 | 15 | 20 | 25 | 30 | 35 |
| Salinity = 10 g/kg | | | | | | | | |
| pH..... | | | | | | | | |
| 7.0..... | 270 | 191 | 131 | 92 | 62 | 44 | 29 | 21 |
| 7.2..... | 175 | 121 | 83 | 58 | 40 | 27 | 19 | 13 |
| 7.4..... | 110 | 77 | 52 | 35 | 25 | 17 | 12 | 8.3 |
| 7.6..... | 69 | 48 | 33 | 23 | 16 | 11 | 7.7 | 5.6 |
| 7.8..... | 44 | 31 | 21 | 15 | 10 | 7.1 | 5.0 | 3.5 |
| 8.0..... | 27 | 19 | 13 | 9.4 | 6.4 | 4.6 | 3.1 | 2.3 |
| 8.2..... | 18 | 12 | 8.5 | 5.8 | 4.2 | 2.9 | 2.1 | 1.5 |
| 8.4..... | 11 | 7.9 | 5.4 | 3.7 | 2.7 | 1.9 | 1.4 | 1.0 |
| 8.6..... | 7.3 | 5.0 | 3.5 | 2.5 | 1.8 | 1.3 | 0.98 | 0.75 |
| 8.8..... | 4.6 | 3.3 | 2.3 | 1.7 | 1.2 | 0.92 | 0.71 | 0.56 |
| 9.0..... | 2.9 | 2.1 | 1.5 | 1.1 | 0.85 | 0.67 | 0.52 | 0.44 |
| Salinity = 10 g/kg | | | | | | | | |
| 7.0..... | 291 | 200 | 137 | 96 | 64 | 44 | 31 | 21 |
| 7.2..... | 183 | 125 | 87 | 60 | 42 | 29 | 20 | 14 |
| 7.4..... | 116 | 79 | 54 | 37 | 27 | 18 | 12 | 8.7 |
| 7.6..... | 73 | 50 | 35 | 23 | 17 | 11 | 7.9 | 5.6 |
| 7.8..... | 46 | 31 | 23 | 15 | 11 | 7.5 | 5.2 | 3.5 |
| 8.0..... | 29 | 20 | 14 | 9.8 | 6.7 | 4.8 | 3.3 | 2.3 |
| 8.2..... | 19 | 13 | 8.9 | 6.2 | 4.4 | 3.1 | 2.1 | 1.6 |
| 8.4..... | 12 | 8.1 | 5.6 | 4.0 | 2.9 | 2.0 | 1.5 | 1.1 |
| 8.6..... | 7.5 | 5.2 | 3.7 | 2.7 | 1.9 | 1.4 | 1.0 | 0.77 |
| 8.8..... | 4.8 | 3.3 | 2.5 | 1.7 | 1.3 | 0.94 | 0.73 | 0.56 |
| 9.0..... | 3.1 | 2.3 | 1.6 | 1.2 | 0.87 | 0.69 | 0.54 | 0.44 |
| Salinity = 10 g/kg | | | | | | | | |
| 7.0..... | 312 | 208 | 148 | 102 | 71 | 48 | 33 | 23 |
| 7.2..... | 196 | 135 | 94 | 64 | 44 | 31 | 21 | 15 |
| 7.4..... | 125 | 85 | 58 | 40 | 27 | 19 | 13 | 9.4 |
| 7.6..... | 79 | 54 | 37 | 25 | 21 | 12 | 8.5 | 6.0 |
| 7.8..... | 50 | 33 | 23 | 16 | 11 | 7.9 | 5.4 | 3.7 |
| 8.0..... | 31 | 21 | 15 | 10 | 7.3 | 5.0 | 3.5 | 2.5 |
| 8.2..... | 20 | 14 | 9.6 | 6.7 | 4.6 | 3.3 | 2.3 | 1.7 |
| 8.4..... | 12.7 | 8.7 | 6.0 | 4.2 | 2.9 | 2.1 | 1.6 | 1.1 |
| 8.6..... | 8.1 | 5.6 | 4.0 | 2.7 | 2.0 | 1.4 | 1.1 | 0.81 |
| 8.8..... | 5.2 | 3.5 | 2.5 | 1.8 | 1.3 | 1.0 | 0.75 | 0.58 |
| 9.0..... | 3.3 | 2.3 | 1.7 | 1.2 | 0.94 | 0.71 | 0.56 | 0.46 |

TABLE 2.—WATER QUALITY CRITERIA FOR SALTWATER AQUATIC LIFE BASED ON TOTAL AMMONIA (mg/L) CRITERIA CONTINUOUS CONCENTRATIONS

| | Temperature (°C) | | | | | | | |
|------------------|------------------|------|------|------|------|------|------|------|
| | 0 | 5 | 10 | 15 | 20 | 25 | 30 | 35 |
| Salinity=10 g/kg | | | | | | | | |
| pH | | | | | | | | |
| 7.0 | 41 | 29 | 20 | 14 | 9.4 | 6.6 | 4.4 | 3.1 |
| 7.2 | 26 | 18 | 12 | 8.7 | 5.9 | 4.1 | 2.8 | 2.0 |
| 7.4 | 17 | 12 | 7.8 | 5.3 | 3.7 | 2.6 | 1.8 | 1.2 |
| 7.6 | 10 | 7.2 | 5.0 | 3.4 | 2.4 | 1.7 | 1.2 | 0.84 |
| 7.8 | 6.6 | 4.7 | 3.1 | 2.2 | 1.5 | 1.1 | 0.75 | 0.53 |
| 8.0 | 4.1 | 2.9 | 2.0 | 1.40 | 0.97 | 0.69 | 0.47 | 0.34 |
| 8.2 | 2.7 | 1.8 | 1.3 | 0.87 | 0.62 | 0.44 | 0.31 | 0.23 |
| 8.4 | 1.7 | 1.2 | 0.81 | 0.56 | 0.41 | 0.29 | 0.21 | 0.16 |
| 8.6 | 1.1 | 0.75 | 0.53 | 0.37 | 0.27 | 0.20 | 0.15 | 0.11 |
| 8.8 | 0.69 | 0.50 | 0.34 | 0.25 | 0.18 | 0.14 | 0.11 | 0.08 |
| 9.0 | 0.44 | 0.31 | 0.23 | 0.17 | 0.13 | 0.10 | 0.08 | 0.07 |
| Salinity=20 g/kg | | | | | | | | |
| 7.0 | 44 | 30 | 21 | 14 | 9.7 | 6.6 | 4.7 | 3.1 |
| 7.2 | 27 | 19 | 13 | 9.0 | 6.2 | 4.4 | 3.0 | 2.1 |
| 7.4 | 18 | 12 | 8.1 | 5.6 | 4.1 | 2.7 | 1.9 | 1.3 |
| 7.6 | 11 | 7.5 | 5.3 | 3.4 | 2.5 | 1.7 | 1.2 | 0.84 |
| 7.8 | 6.9 | 4.7 | 3.4 | 2.3 | 1.6 | 1.1 | 0.78 | 0.53 |
| 8.0 | 4.4 | 3.0 | 2.1 | 1.5 | 1.0 | 0.72 | 0.50 | 0.34 |
| 8.2 | 2.8 | 1.9 | 1.3 | 0.94 | 0.66 | 0.47 | 0.31 | 0.24 |
| 8.4 | 1.8 | 1.2 | 0.84 | 0.59 | 0.44 | 0.30 | 0.22 | 0.16 |
| 8.6 | 1.1 | 0.78 | 0.56 | 0.41 | 0.28 | 0.20 | 0.15 | 0.12 |
| 8.8 | 0.72 | 0.50 | 0.37 | 0.26 | 0.19 | 0.14 | 0.11 | 0.08 |
| 9.0 | 0.47 | 0.34 | 0.24 | 0.18 | 0.13 | 0.10 | 0.08 | 0.07 |
| Salinity=30 g/kg | | | | | | | | |
| 7.0 | 47 | 31 | 22 | 15 | 11 | 7.2 | 5.0 | 3.4 |
| 7.2 | 29 | 20 | 14 | 9.7 | 6.6 | 4.7 | 3.1 | 2.2 |
| 7.4 | 19 | 13 | 8.7 | 5.9 | 4.1 | 2.9 | 2.0 | 1.4 |
| 7.6 | 12 | 8.1 | 5.6 | 3.7 | 3.1 | 1.8 | 1.3 | 0.90 |
| 7.8 | 7.5 | 5.0 | 3.4 | 2.4 | 1.7 | 1.2 | 0.81 | 0.56 |
| 8.0 | 4.7 | 3.1 | 2.2 | 1.6 | 1.1 | 0.75 | 0.53 | 0.37 |
| 8.2 | 3.0 | 2.1 | 1.4 | 1.0 | 0.69 | 0.50 | 0.34 | 0.25 |
| 8.4 | 1.9 | 1.3 | 0.90 | 0.62 | 0.44 | 0.31 | 0.23 | 0.17 |
| 8.6 | 1.2 | 0.84 | 0.59 | 0.41 | 0.30 | 0.22 | 0.16 | 0.12 |
| 8.8 | 0.78 | 0.53 | 0.37 | 0.27 | 0.20 | 0.15 | 0.11 | 0.09 |
| 9.0 | 0.50 | 0.34 | 0.26 | 0.19 | 0.14 | 0.11 | 0.08 | 0.07 |

Appendix B—Response to Public Comments of the Draft Criteria Document for Ammonia (Saltwater)

After review of all the comments received during the public comment period following the announcement of their availability in the *Federal Register*, the agency has prepared the following response. A total of 3 respondents submitted comments, and except for a few redundant points, each comment has been answered individually. The references which are cited appear at the end of this document.

Comment: The chronic value from the mysid life-cycle test should be raised from 0.1224 mg/L to 0.2323 mg/L because decreased length of females without a decrease in weight is not biologically significant.

Response: EPA agrees that a five percent decrease in length of females, particularly in the absence of a decrease in lengths of males and in weights of mysids of both sexes, is probably not biologically meaningful. Reproduction of

mysids is related to size. Because a statistically significant decrease in size is more readily detected than a decrease in reproduction, a decrease in length may be biologically important. In this experiment, no decrease in reproduction is evident.

Comment: The chronic value from the silverside early life-stage test should be raised from 0.061 mg/L to 0.289 mg/L because wet, and not dry, weights of fish were used to set the chronic values.

Response: Early life-stage tests based on survival and growth are considered surrogates in the National Guidelines for entire life-cycle tests based on survival, growth and reproduction. Therefore, early life-stage tests with fishes must include measurements of growth if results are interpreted as concentrations protecting a fish throughout its life-cycle.

EPA agrees with ASTM that dry weights are generally preferred over wet weights. Either procedure is acceptable by ASTM and both are required if fish

are edematous. The important issue is not how size is measured, rather, it is whether size differences are a result of exposure to ammonia. The evidence available indicates that reductions in growth of silversides are real. Reductions in weights were concentration dependent; silversides exposed to 0.074 mg/L unionized ammonia weighed 84.6% of the weights of control fish and fish exposed to 0.38 mg/L weighed 68.5% of controls. Fish in intermediate concentrations of ammonia were similarly affected. Probably even more importantly, ammonia's chronic effect on growth is well-documented in early life-stage or life-cycle tests with mysids, stoneflies, pink salmon, rainbow trout, Atlantic salmon, fathead minnows, green sunfish, bluegill, smallmouth bass, and channel catfish.

Comment: Chronic values from the silverside early life-stage (ELS) test are inappropriate for use because only acute-chronic ratios from studies where

pH > 7.7 should be used as was the case in the freshwater criteria document.

Response: The ELS test with *Menidia beryllina* is one of only two chronic tests with saltwater species and, as such, should only be deleted for very good cause. Chronic data from the smallmouth bass ELS tests, which represents the best chronic freshwater data base, indicates that acute:chronic ratios at pH values of 7.2 and 6.6 are greater than those at pH values of 7.8 and 8.7. This suggests that somewhere between a pH of 7.2 and 7.8 the ratio is pH dependent. Although the fresh water document mentions the value of > 7.7, the range of pH values was considerably lower in tests actually used to calculate the final acute chronic ratios in the freshwater document. For example, pH ranged from 7.3 to 7.6 for tests with rainbow trout and from 7.34 to 7.95, 7.53 to 8.37 and 7.6 to 7.8 in three tests with channel catfish. In the *Menidia* ELS test, the pH values from critical concentrations; i.e., upper and lower chronic values, averaged 7.60 and 7.73. Therefore, data from the *Menidia* test is not unique relative to fresh water data and the test should not be rejected based on pH. Finally, the role of pH in the acute toxicity of ammonia to saltwater species appears less than that for freshwater species. This may also be true for the pH-chronic toxicity relationship.

Comment: The acute:chronic ratio of 15 for catfish should not be used because it is based on an acute value from a 24-hour test.

Response: The presumed 96-hour LC50 (1.57 mg/L, extrapolated from the 24-hr LC50 of 2.42 mg/L) is in the lower range of LC50s for channel catfish and to suggest that the 96-hour LC50 is much lower is unreasonable based on existing information. The acute:chronic ratio is high not because the LC50 is too high, but because the chronic value is the lowest observed one. To ignore the fact that this chronic value indicates a higher acute:chronic ratio would be irresponsible. Also, the lowest acute:chronic ratio for channel catfish (7.5) is based on a juvenile test, which can be argued even more to be of secondary importance. Also, an additional chronic test which had effects at the lowest tested concentration indicated that the acute:chronic ratio is probably 12 or greater, but this was not used because it was indeterminate. The average ratio used for catfish (10) is therefore, reasonable.

Comment: The chronic value for the white sucker appears to be overestimated. The decrease growth was neither biologically nor statistically significant.

Response: The author of this study is trying to locate the original data so that a complete analysis can be done. Interim analysis by EPA using data from the report has suggested that this chronic value is not likely valid. An analysis of variance using mean lengths within tanks indicated no statistically significant effect. Furthermore, independent of any statistical significance, there is little support for the opinion that the 5% reduction in length at 0.063 mg/L is actually an effect of ammonia, because (a) this effect is small, (b) there was little or no further effect at 0.101 and 0.187 mg/L, and (c) there was no reduction in weight at any of these concentrations (in fact, weights were greatest at 0.063 mg/L). The percent swim-up at 72 hours was also affected at 0.063 mg/L, but this was based on pairwise tests rather than multiple comparison tests and was not considered in our document as establishing an appropriate chronic value. Until data from this experiment becomes available, the acute:chronic ratio for the white sucker will not be used.

Comment: Scientific justification is not provided for the use of only those acute:chronic ratios for freshwater fishes for which the chronic value was less than the median and for which the chronic test was run at pH 7.7 or above.

Response: Justification of this approach is provided in the ammonia water criteria document for fresh water (U.S. EPA, 1985). Available chronic data for freshwater species suggest a greater effect of pH on chronic toxicity than acute toxicity, leading to greater acute:chronic ratios at low pH. Chronic tests at pH 7.5 and below reflect this phenomenon; to use ratios from these tests would produce too high a ratio for the higher pHs. A pH > 7.7 was selected for the average simply because in this range, no pH effects on ratios were evident. Criteria at lower pH are adjusted upward from this average, consistent with available data. Since total ammonia is not more restrictive at low pH, EPA does not believe this protocol represents any real hardship.

By definition, the acute:chronic ratio should be appropriate for taking the fifth percentile acute value and computing the fifth percentile chronic value. Thus, ratios for organisms at high percentile values are irrelevant to computing an appropriate ratio. Since there were nine acute:chronic ratios in the accepted pH range, there was sufficient information on the apparent percentile range for the chronic values that it was not appropriate to use all ratios. By using the median as a breaking point, there were still five ratios (more than the

minimum needed) and it can be best argued that the organisms with chronic tolerance above the median are most irrelevant to regulating the criterion. Also, there was a good separation of sensitivities and ratios—the warm water fish with average chronic values < 0.2 mg/L had ratios of 10 and above, while the invertebrates and fish with chronic values > 0.3 mg/L had ratios of 6 and below. (ERL, Duluth response)

Comment: The majority of the data used to derive the ammonia criteria are results of bioassays which would probably not meet the EPA draft specifications for the exposure conditions during short-term tests, and hence are not sound scientific studies. Of concern is the reported variance in pH in the ammonia test exposures. The mysid and sheepshead minnow data sets specifically should not be used since a majority of these tests did not meet the exposure conditions required by pH, temperature, and salinity specified in EPA draft short-term methods.

Response: The draft short-term methods referred to above are EPA's tests for rapidly evaluating the toxicity of effluents and receiving waters (Weber et al. 1988). These short-term tests have rather restrictive exposure conditions due to their particular application and are not acceptable for calculation of criteria concentrations. The appropriate tests for derivation of the Final Acute and Chronic Values in Water Quality Criteria documents are acute toxicity tests (96H in most cases) and early life stage or life-cycle toxicity tests. The ammonia criteria for salt water are based on these latter types of tests which were conducted in a manner consistent with ASTM standard practices and include tests at different pH, temperature or salinity conditions to determine the effect of each on the toxicity of un-ionized ammonia.

Comment: The conclusion that pH does not have a consistent influence on ammonia acute toxicity would not be supported if the saltwater data were interpreted in a manner consistent with the freshwater data. Therefore, it appears premature to dismiss pH dependency.

Response: The ammonia water quality criteria for fresh water required data sets of at least six LC50 observations spread over at least four distinct pHs, with a range of at least 1.5 pH units, for critical evaluation of pH dependency model fit. The empirical model for pH dependency was developed using data sets for the three freshwater fishes and one fresh water invertebrate which met these requirements. No saltwater data

sets meet these requirements if we limit our consideration to flow-through test results only. The flow-through restriction was adopted in light of the difficulty of controlling pH in static ammonia toxicity tests in salt water, particularly at pHs beyond the naturally buffered range of 7.8 to 8.2.

The freshwater ammonia criteria states that its empirical model for pH dependency cannot be considered universally applicable. EPA has concluded that there are insufficient saltwater data to support use of this model with ammonia criteria for saltwater biota. The saltwater flow-through data sets for individual species are too small to be tested statistically against the non-linear freshwater model. Pooling these data failed to produce a model fit after 50 iterations using LC50s representing the pH range of 7 to 9, nor for the 7 to 8 pH range alone. EPA excluded from these pooled data sets *Menidia beryllina* values at low salinity and also the LC50 for pH 9 at 31 g/kg, since these results clearly do not fit the model. The mechanism of acute toxicity of ammonia in aquatic organisms is unknown, but it is possible that a freshwater model for ammonia toxicity may not be applicable to saltwater biota. Freshwater and saltwater organisms are adapted to markedly different osmotic and ionic environments and their physiological responses to elevated concentrations of ammonia may differ as well.

A comparison of the general relationship between pH and acute ammonia toxicity in freshwater and saltwater animals shows certain similarities, but also some distinct differences. The primary similarity exists in the increase in NH_3 toxicity at pHs below 8, which is evident in mysids, prawn (not flow-through) and inland silverside when tested in full strength sea water. Above pH 8, mysids differ from most freshwater species, with acute toxicity continuing to decrease by a factor of 1.7 to 2 with a one pH unit increase. On the other hand, inland silverside tested in full strength sea water differ from freshwater species with greater than a factor of 2 decrease in toxicity at pH 9 relative to pH 8. A marked departure from this freshwater pattern also is evident with inland silversides tested at 11 g/kg, a typical salinity for this species, with a lower toxicity at pH 7 than at pH 8. In contrast to either of these species, static tests with Atlantic silverside suggest little influence of pH on toxicity. In light of these different responses as well as the limited information available on pH influence, particularly for saltwater

fishes, EPA concluded it is premature to adopt an ammonia criteria for salt water which is pH dependent. EPA encourages the development of data bases on water quality-toxicity relationships for saltwater species for pH, temperature and other factors. Design of this research should take into account acclimation history of tested species.

Comment: EPA has not dealt properly with the issue of pH determination in salt water in its analysis of the ammonia toxicity literature. Rather than accepting the un-ionized ammonia concentrations as reported, it is recommended that the Agency determine whether low ionic strength standard buffers were used in measuring pH by each author. These pH values should be modified using the Davies approximation of the Debye-Huckel Limiting Law and the revised values used to adjust reported un-ionized ammonia toxicity values.

Response: None of the ammonia toxicity literature reviewed stated use of TRIS seawater buffer standards, which are alternatives to low ionic strength National Bureau of Standards (NBS) buffers for calibration. It is reasonable to assume that only NBS standards have been employed, since these are the only standards which are commercially available to investigators. Millero (1986) has shown pH(NBS) produces a small overestimation of pH measured on the free hydrogen ion scale (pH(F)), which is the scale used by Khoo et al. 1977 in their experimental determination of the thermodynamics ammonium ion dissociation in sea water. This difference is on the order of 0.02 pH unit at 30 g/kg salinity and increases with a decrease in salinity to 0.075 pH unit at 10 g/kg salinity. Reported pH values also reflect variance (± 0.03 pH unit) due to residual liquid junction potential (Whitfield et al. 1985). Variability in reported pH values from these two sources was recognized by EPA and is considered to be small, well within the factor of 2 variance which may occur between laboratories conducting toxicity tests. Use of the Davies approximation to revise pH values and adjust NH_3 toxicity values would not be appropriate, as it is not applicable in natural water systems having electrolyte mixtures of unlike charge types (Stumm and Morgan 1981, p. 134).

Comment: The use of Hampson's (1977) computer program to calculate criteria values for total ammonia is improper because this program is only valid when using pH calibrated with a synthetic seawater buffer, not the pH(NBS) which is the scale approved by EPA for measuring pH.

Response: The experimental verification by Khoo et al. (1977) of Whitfield's (1974) calculations of the hydrolysis of ammonium ions in sea water shows that pH determination using the free hydrogen ion scale (pH(F)) produces values in close agreement with Whitfield's models. Use of the pH(f) scale in ammonia toxicity testing would be desirable from a thermodynamic standpoint. This is not practical, however, as seawater buffers are not commercially available and they are moderately difficult to prepare (Culbertson, personal communication). Calibration of pH with NBS buffers does result in an overestimation of pH, relative to pH(F), but fortuitously the error is small (0.02 pH unit at 30 g/kg salinity and 0.075 at 10 g/kg), presumably due to a compensation of residue liquid junction potential by changes in activity coefficients (Millero 1986). The use of pH(NBS) in ammonia toxicity testing or in environmental monitoring does not invalidate use of Whitfield's models or Hampson's (1977) program to calculate the un-ionized ammonia fraction.

Consistent use of pH(NBS) in ammonia toxicity studies which support saltwater ammonia criteria and in water quality monitoring for ammonia will reduce the problems associated with use of low ionic strength standards when measuring pH in salt water. Residue liquid junction potential errors up to ± 0.03 pH unit may still occur when using pH(NBS) in salt water (Whitfield et al. 1985) and will result in some error in NH_3 calculations. In light of the importance of pH in this calculation, it is crucial to take steps to increase precision in pH measurements made for these purposes, which is the intent of the implementation section of the saltwater ammonia criteria document.

The EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio, has been requested to investigate issues associated with accurate and precise measurement of pH in salt water. This will include evaluating the desirability of a new methods standardization for estuarine and ocean water pH.

Comment: The saltwater ammonia document differs from the fresh water document in the treatment of the temperature dependence of the dissociation constant for ammonia.

Response: The relationship between the dissociation constant (pK_a) and temperature used in the saltwater document, is of the form.

$$\text{pK}_a^* = A + B + BT$$

as employed by Whitfield (1974, Eq. 19). In that paper, Whitfield concluded that this relationship was reasonable based on good agreement of the experimental and calculated values of pK_a 's available at that time (Table 9, Whitfield). Examining experimental measurements of Khoo et al. (1977), Whitfield (1978) subsequently noted that a more accurate representation of temperature variation of pK_a 's is the form

$$pK_a = A/T + B + CT$$

particularly at 35°C or at 44.55 g/kg salinity (Table 6). However, across the temperature range of 5 to 25°C at 20.31 and 35 g/kg salinity, Whitfield's former relationship also corresponded well with the experimental measurements of Khoo et al. (1977).

Reference Cited

- Hampson, B.L. 1977. Relationship between total ammonia and free ammonia in terrestrial and ocean waters. *J. Const. int. Explor. Mer* 37:117-122.
- Khoo, K.H., C.H. Culbertson, and R.C. Bates. 1977. Thermodynamics of the dissociation of ammonium ion in sea water from 5 to 40°C. *J. Solution Chem.* 6:281-290.
- Millero, F.J. 1986. The pH of estuarine waters. *Limnol. Oceanogr.* 31:839-847.
- Stumm, W. and J.J. Morgan. 1981. *Aquatic Chemistry*. Second Ed. Wiley-Interscience, N.Y., N.Y.: 780 p.
- U.S. Environmental Protection Agency. 1985. *Ambient water quality criteria for ammonia—1984*. EPA 440/5-84-001. U.S. EPA, Office of Water Regulations and Standards, Washington, D.C.: 217 p.
- Weber, C.L. et al. 1988. Short-term methods for estimating the chronic toxicity of effluents and receiving waters to marine and estuarine organisms. EPA-600/4-87-028, Draft. U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio.
- Whitfield, M. 1974. The hydrolysis of ammonium ions in sea water—a theoretical study. *J. Mar. Biol. Assoc. U.K.* 54:565-580.
- _____. 1978. The hydrolysis of ammonium ions in sea water—experimental confirmation of predicted constants at one atmosphere pressure. *J. Mar. Biol. Assoc. U.K.* 58:781-787.
- _____, R.A. Butler, and A.K. Covington. 1985. The determination of pH in estuarine waters. I. Definition of pH scales and the selection of buffers. *Oceanol. Acta* 8:423-432.

[FR Doc. 89-10719 Filed 5-3-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3566-8]

Science Advisory Board Environmental Engineering Committee, Saturated Zone Model Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee

(EEC), Saturated Zone Model (SZM) Subcommittee, will meet May 30-31, 1989 in the Waterside Mall, EPA Headquarters in South Conference Room, Number 4, 401 M Street SW., Washington, DC. The meeting will begin at 9:00 a.m. on Tuesday and Wednesday, and adjourn no later than 5:00 p.m.

The purpose of the meeting is to review the Environmental Protection Agency's, Office of Solid Waste's Combined-Numerical Saturated Zone (CANSZ) flow and transport module for the simulation of flow and transport of contaminants in the saturated zone. The two major areas identified for SAB review include the assumptions underlying CANSZ and the adequacy of CANSZ.

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board, (A101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by May 23, 1989. Seating at the meeting will be on a first come basis.

Date: April 21, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-10721 Filed 5-3-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51731; FRL-3567-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 84 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-460—June 4, 1989.

P 89-490, 89-491—June 12, 1989.

P 89-492, 89-493, 89-494—June 14, 1989.

P 89-495, 89-496, 89-497—June 17, 1989.

P 89-498—June 14, 1989.

P 89-499, 89-500, 89-501, 89-502, 89-503, 89-504, 89-505, 89-506—June 17, 1989.

P 89-507, 89-508, 89-509, 89-510, 89-511, 89-512, 89-513, 89-514, 89-515, 89-516, 89-517—June 18, 1989.

P 89-518, 89-519, 89-520, 89-521—June 19, 1989.

P 89-522—June 20, 1989.

P 89-523, 89-524, 89-525, 89-526, 89-527, 89-528, 89-529—June 21, 1989.

P 89-530, 89-531, 89-532, 89-533, 89-534, 89-535, 89-536, 89-537, 89-538, 89-539, 89-540, 89-541, 89-542, 89-543, 89-544, 89-545, 89-546, 89-547, 89-548, 89-549, 89-550, 89-551, 89-552, 89-553, 89-554, 89-555, 89-556, 89-557, 89-558, 89-559, 89-560, 89-561, 89-562, 89-563, 89-564, 89-565—June 24, 1989.

P 89-566, 89-567, 89-568—June 26, 1989.

P 89-569—June 14, 1989.

P 89-570—June 26, 1989.

P 89-571, 89-572—June 27, 1989.

Written comments by:

P 89-460—May 5, 1989.

P 89-490, 89-491—May 13, 1989.

P 89-492, 89-493, 89-494—May 15, 1989.

P 89-495, 89-496, 89-497—May 18, 1989.

P 89-498—May 15, 1989.

P 89-499, 89-500, 89-501, 89-502, 89-503, 89-504, 89-505, 89-506—May 18, 1989.

P 89-507, 89-508, 89-509, 89-510, 89-511, 89-512, 89-513, 89-514, 89-515, 89-516, 89-517—May 19, 1989.

P 89-518, 89-519, 89-520, 89-521—May 20, 1989.

P 89-522—May 21, 1989.

P 89-523, 89-524, 89-525, 89-526, 89-527, 89-528, 89-529—May 22, 1989.

P 89-530, 89-531, 89-532, 89-533, 89-534, 89-535, 89-536, 89-537, 89-538, 89-539, 89-540, 89-541, 89-542, 89-543, 89-544, 89-545, 89-546, 89-547, 89-548, 89-549, 89-550, 89-551, 89-552, 89-553, 89-554, 89-555, 89-556, 89-557, 89-558, 89-559, 89-560, 89-561, 89-562, 89-563, 89-564, 89-565—May 25, 1989.

P 89-566, 89-567, 89-568—May 27, 1989.

P 89-569—May 15, 1989.

P 89-570—May 27, 1989.

P 89-571—May 28, 1989.

ADDRESS: Written comments, identified by the document control number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460 (202) 554-1305.

FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m.,

Monday through Friday, excluding legal holidays.

P 89-460

Manufacturer. Werner G. Smith, Inc.
Chemical. (S) Mixed esters of 1,6-hexanedioic acid, isodecyl alcohol and alkenes, C6-C10 hydroformylation products high boiling.

Use/Production. (S) Additive for use in aluminium can forming lube. Prod. range: 21,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 15,800 MG/KG species (Rat). Acute dermal toxicity: LD50 > 7,940 species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Human).

P 89-490

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Styrene acrylate copolymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-491

Manufacturer. Confidential.
Chemical. (G) Cathodic epoxy intermediate.

Use/Production. (G) Cathodic electrocoat intermediate. Prod. range: Confidential.

P 89-490

Manufacturer. Confidential.
Chemical. (G) Epoxy modified polyester polymer.

Use/Production. (G) Binder for industrial protection coating. Prod. range: 318,000,800,000 kg/yr.

P 89-493

Manufacturer. Occidental Chemical Corporation.

Chemical. (G) Heterocyclic amine.
Use/Production. (S) Polymerization addition. Prod. range: 1,00-4,000 kg/yr.

Toxicity Data: Acute oral toxicity: LD50 > 5 G/KG species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-494

Importer. Dow Corning Corporation.
Chemical. (G) Silicic acid, tetraethyl ester, reaction products with chloro(chloromethyl)dimethylsilane and ethoxysilane.

Use/Import. (G) Resist resin. Import range: 200-800 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5 G/KG species (Rat). Acute dermal toxicity: LD50 > 2 G/KG species (Rabbit). Eye irritation: none

species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-495

Importer. Confidential
Chemical. (G) Ethenetricarbonitrile derivative.

Use/Import. (G) Coloring agent.

Import range: Confidential

Toxicity Data. Mutagenicity: negative.

P 89-496

Importer. Confidential
Chemical. (G) Propanedinitrile derivative.

Use/Import. (G) Coloring agent.

Import range: Confidential

Toxicity Data. Mutagenicity: negative.

P 89-497

Importer. Confidential
Chemical. (G) Propaneamine derivative.

Use/Importer. (G) Coloring agent.

Import range: Confidential

Toxicity Data. Mutagenicity: negative.

P 89-498

Importer. Organic Dyestuff Corporation.

Chemical. (G) Reaction Red 21.

Use/Import. (S) Shading color. Import range: Confidential

P 89-499

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Acrylic polyelectrolyte.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential

P 89-490

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Acrylic polyelectrolyte.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential

P 89-501

Manufacturer. Confidential
Chemical. (G) Alkylarly cellulose ether.

Use/Production. (S) Paint thickener. Prod. range: Confidential.

P 89-502

Importer. Confidential
Chemical. (G) Polyurethane-polyvinyl chloride complex.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 89-503

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Automotive body patch resin. Prod. range: Confidential.

P 89-504

Manufacturer. PPG Industries.

Chemical. (S) 1,4-Butanediol-bis-chloroformate.

Use/Production. (S) Intermediate for manufacture polycarbonate diols. Prod. range: 50,000-250,000 kg/yr.

P 89-505

Manufacturer. Confidential

Chemical. (G) Amino modified silicone.

Use/Production. (S) Component of fiber finishing formulation. Prod. range: Confidential.

P 89-506

Manufacturer. Confidential.

Chemical. (G) Oligomeric diphenylamine.

Use/Production. (G) Lubricant additive; plastic additive. Prod. range: Confidential.

P 89-507

Manufacturer. Confidential.

Chemical. (G) Substituted methacrylate.

Use/Production. (S) Intermediate. Prod. range: 84,000-94-000 kg/yr.

P 89-508

Manufacturer. Confidential.

Chemical. (G) Styrenated acrylated methacrylate.

Use/Production. (G) Dispersively applied coating. Prod. range: 250,000-280,000 kg/yr.

P 89-509

Manufacturer. Confidential.

Chemical. (G) Polyester of neopentyl glycol.

Use/Production. (S) Intermediate. Prod. range: 3,800-9,900 kg/yr.

P 89-510

Manufacturer. Confidential.

Chemical. (G) Polyamido polyurea

Use/Production. (G) Dispersively applied coating. Prod. range: 12,000-30,000 kg/yr.

P 89-511

Manufacturer. NL Chemicals.

Chemical. (G) Polyester resin.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-512

Manufacturer. NL Chemicals.

Chemical. (G) Polyester resin.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-513

Manufacturer. NL Chemicals.
Chemical. (G) Polyester resin.
Use/Production. (G) Intermediate for industrial use. Prod. range: Confidential.

P 89-514

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane dispersion.
Use/Production. (S) Modifier for coatings, inks, adhesives. Prod. range: Confidential.

P 89-515

Manufacturer. Harcros Chemicals Inc.
Chemical. (G) Alkyl aryl amine sulfonate.
Use/Production. (S) Pesticide emulsifier. Prod. range: 20,000-30,000 kg/yr.

P 89-516

Manufacturer. Confidential.
Chemical. (G) Alkoxy titanate.
Use/Production. (S) Transesterification catalyst. Prod. range: Confidential.

P 89-517

Manufacturer. Confidential.
Chemical. (G) Alkoxy alkyl titanate.
Use/Production. (S) Transesterification catalyst. Prod. range: Confidential.

P 89-518

Manufacturer. The Dow Chemical Company.
Chemical. (G) Toluene diisocyanate prepolymer.
Use/Production. (G) Raw material for polyurethane foam. Prod. range: Confidential.

P 89-519

Manufacturer. The Dow Chemical Company.
Chemical. (G) Toluene diisocyanate prepolymer.
Use/Production. (G) Raw material for polyurethane foam. Prod. range: Confidential.

P 89-520

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (G) Organosiloxane.
Use/Import. (G) Reactive ingredient for radical-polymerization res. Import range: 400-800 kg/yr.

P 89-521

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (G) Amino methacrylate copolymer.
Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: LC50 13 MG/L time species(Fathead minnow). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit).

P 89-522

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Amino epoxy curing agent.
Use/Import. (G) Epoxy curing agent. Import range: Confidential.

P 89-523

Manufacturer. Confidential.
Chemical. (G) Modified polyacrylamide.
Use/Production. (S) Flocculant for dewatering sludge. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 4 G/KG species(Rat). Static acute toxicity: LC50 2.6 MG/L time 96 H species(Fathead minnow). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-524

Manufacturer. Confidential.
Chemical. (G) Modified polyacrylamide.
Use/Production. (S) Flocculant for dewatering sludge. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 4 G/KG species(Rat). Static acute toxicity: LC50 2.6 MG/L time 96 H species(Fathead minnow). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-525

Manufacturer. Confidential.
Chemical. (G) Modified polyacrylamide.
Use/Production. (S) Flocculant for dewatering sludge. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 4 G/KG species(Rat). Static acute toxicity: LC50 2.6 MG/L time 96 H species(Fathead minnow). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-526

Manufacturer. Confidential.
Chemical. (G) Modified polyacrylamide.
Use/Production. (S) Flocculant for dewatering sludge. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 4 G/KG species(Rat). Static acute toxicity: LC50 2.6 MG/L time species(Fathead minnow). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-527

Manufacturer. Confidential.
Chemical. (G) Modified polyacrylamide.
Use/Production. (S) Flocculant for dewatering sludge. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 4 G/KG species(Rat). Static acute toxicity: LC50 2.6 MG/L time species(Fathead minnow). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-528

Manufacturer. Confidential.
Chemical. (G) Modified polyacrylate.
Use/Production. (S) Flocculant for dewatering sludge. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 4 G/KG species(Rat). Static acute toxicity: LC50 2.6 MG/L time species(Fathead minnow). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-529

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Paint. Prod. range: Confidential.

P 89-530

Manufacturer. Confidential.
Chemical. (G) Disubstituted cyclopentanone.
Use/Production. (G) Photosensitive film additive. Prod. range: Confidential.

P 89-531

Manufacturer. Confidential.
Chemical. (G) Substituted pyrylium salt.
Use/Production. (G) Dye Intermediate. Prod. range: Confidential.

P 89-532

Manufacturer. Confidential.
Chemical. (G) Substituted pyrylium based squarylium dye.
Use/Production. (G) Liquid crystal cell additive. Prod. Range: Confidential.

P 89-533

Manufacturer. Confidential.
Chemical. (G) Substituted pyrylium salt.
Use/Production. (G) Dye intermediate. Prod. range: Confidential.

P 89-534

Manufacturer. Confidential.
Chemical. (G) Substituted 2H-Pyran.
Use/Production. (G) Dye intermediate. Prod. range: Confidential.

P 89-535

Manufacturer. Confidential.
Chemical. (G) Aliphatic dione.
Use/Production. (G) Dye intermediate.
 Prod. range: Confidential.

P 89-536

Manufacturer. Confidential.
Chemical. (G) Substituted thiopyrylium based squarylium dye.
Use/Production. (G) Liquid crystal cell additive. Prod. range: Confidential.

P 89-537

Manufacturer. Confidential.
Chemical. (G) Substituted thiopyrylium salt.
Use/Production. (G) Dye intermediate.
 Prod. range: Confidential.

P 89-538

Importer. Confidential.
Chemical. (G) Phosphoramidate.
Use/Import. (G) Fertilizer additive.
 Import range: 1,250,000-5,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 4.2 G/KG species (Rat). Acute dermal toxicity: LD50 > 2 G/KG species (Rabbit). Mutagenicity: negative. Skin sensitization: positive species (Guinea pig).

P 89-539

Importer. Ohblin Chemical Company.
Chemical. (S) Oxirane, 2,2'-(1,6-hexanediylbis(oxymethylene)bis).
Use/Import. (S) Reactive diluent for epoxy resin systems. Import range: Confidential.

P 89-540

Manufacturer. Confidential.
Chemical. (G) Mog naphtha.
Use/Production. (G) Fuel blending stock. Prod. range: Confidential.

P 89-541

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-542

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-543

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-544

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-545

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-546

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-547

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-548

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-549

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-550

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Confidential.
 Prod. range: Confidential.

P 89-551

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-552

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additives, dispersive use. Prod. range: Confidential.

P 89-553

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-554

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-555

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-556

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-557

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-558

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-559

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-560

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.
Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-561

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.

Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-562

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.

Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-563

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.

Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-564

Manufacturer. Vulcan Oil Company.
Chemical. (G) Mixed ester product of natural oils.

Use/Production. (G) Lubricant additive, dispersive use. Prod. range: Confidential.

P 89-565

Manufacturer. Sannor Industries, Incorporated.
Chemical. (G) Polyurethane based on polyisocyanates, polyols and polyamines.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 89-566

Importer. Confidential.
Chemical. (G) Rosin modified alkyd resin.

Use/Import. (G) Printing ink. Import range: Confidential.

P 89-567

Importer. Confidential.
Chemical. (G) Linseed alkyd resin.
Use/Import. (G) Printing ink. Import range: Confidential.

P 89-568

Manufacturer. Confidential.
Chemical. (G) Dibasic acid, diethyl ester.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89-569

Importer. Ferry Coporation—Bedford Chemical Div.

Chemical. (G) Berium compound.
Use/Import. (S) Plastic additive. Import range: Confidential.

P 89-570

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Manufacture of beta-picoline. Prod. range: Confidential.

P 89-571

Importer. Shin Estu Silicones of America, Inc.
Chemical. (G) Organopolysiloxane.
Use/Import. (S) Lubricant and release agent. Import range: 500-1,000 kg/yr.

Date: April 14, 1989.
Steven Newburg-Rinn,
Acting Director, Information Management
Division, Office of Toxic Substances.
[FR Doc. 89-10720 Filed 5-3-89; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59270; FRL-3567-1]**Toxic and Hazardous Substances; Test Market Exemption Applications**

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATE: Written comments by:

T 89-9, 89-10, 89-11—May 6, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59270]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential

document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. **T 89-9**

Close of Review Period. May 20, 1989.
Manufacturer. Confidential.
Chemical. (G) Substituted heterocycle (end product).

Use/Production. (G) Confidential.
Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 MG/KG species (Rabbit). Acute dermal toxicity: LD50 > 2,000 MG/KG species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

T 89-10

Close of Review Period. May 20, 1989.
Manufacturer. Confidential.
Chemical. (G) Substituted heterocycle (intermediate no. 2).
Use/Production. (G) Confidential.
Prod. range: Confidential.

T 89-11

Close of Review Period. May 20, 1989.
Manufacturer. Confidential.
Chemical. (G) Substituted heterocycle (intermediate no. 1).
Use/Production. (G) Confidential.
Prod. range: Confidential
Toxicity Data. Acute oral toxicity: LD50 > 5,000 MG/KG species (Rat). Acute dermal toxicity: LD50 > 2,000 MG/KG species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

Date: April 14, 1989.
Steven Newburg-Rinn,
Acting Director, Information Management
Division, Office of Toxic Substances.
[FR Doc. 89-10725 Filed 5-3-89; 8:45 am]
BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION**Order Appointing Receiver of the Coleman Production Credit Association**

ACTION: Notice.

SUMMARY: Pursuant to the provisions of section 4.12(b) of the Farm Credit Act of 1971, as amended (1971 Act), 12 U.S.C. 2183(b) and 12 CFR 611.1160, the Farm Credit Administration (FCA) Board hereby appoints James C. Larson (Receiver), an individual with a business

address of P.O. Box 923, San Adreas, California 95249, as Receiver of the Coleman Production Credit Association, P.O. Box 1020, Coleman, Texas 76834-1020 (Institution). The FCA Board takes this action based on a determination that the Coleman Production Credit Association is in an unsafe and unsound condition to transact business. The Receiver shall take possession of all assets of the Institution, wind up its business operations, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to its stockholders in accordance with the 1971 Act, FCA regulations, the FCA Receivership Manual, and this Order and any amendment hereto. In his capacity as receiver, James C. Larson, as agent for the FCA, is granted possession of all of the assets of the Institution and is empowered to execute, acknowledge, and deliver any instrument necessary for any authorized purpose and such instruments are valid and effectual as if they had been executed by the Institution's officers by authority of their board of directors. The Order authorizes James C. Larson to sign any and all documents as Receiver and to delegate signatory authority to any employee of the Institution-in-receivership.

Dated: April 28, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-10602 Filed 5-3-89; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 89-466]

Comments Invited on Southern California Public Safety Plan

April 27, 1989.

The Commission has received the public safety radio communications plan for the Southern California area (Region 5).

In accordance with the Commission's Report and Order in General Docket 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of **Federal Register** publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 5 consists of all of Southern California to the northernmost borders of San Luis

Obispo, Kern, and San Bernardino Counties. (See Memorandum Opinion and Order, General Docket 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 89-97, Southern California Area—Region 5, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Fred Thomas, Office of Engineering and Technology, (202) 653-8112, or Maureen Cesaitis, Private Radio Bureau, (202) 632-6497.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-10657 Filed 5-3-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

First American Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First American Corporation*, Nashville, Tennessee; to engage *de novo* through its subsidiary, First American Community Development Corporation, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the states of Tennessee and Kentucky.

Board of Governors of the Federal Reserve System, April 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10650 Filed 5-3-89; 8:45 am]

BILLING CODE 6210-01-M

Merchant House; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 25, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Merchant House*, Santa Ana, California; to become a bank holding company by acquiring 50.22 percent of the voting shares of PNB Financial Group, Inc., Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

Board of Governors of the Federal Reserve System, April 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10651 Filed 5-3-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; James M. Tate

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 17, 1989.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James M. Tate*, Abilene, Texas; to acquire an additional 7.7 percent for a total of 14.7 percent; and Harold L. Smith, Sr., Abilene, Texas, to acquire an additional 3.6 percent for a total of 12.97 percent of the voting shares of Security Shares, Inc., Abilene, Texas, and thereby indirectly acquire Security State Bank.

Board of Governors of the Federal Reserve System, April 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10652 Filed 5-3-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38418-24, August 31, 1982, as amended most recently at 53 FR 49359, December 7, 1988) is amended to reflect the transfer of the debt management systems function from the Office of Data Analysis and Management to the Division of Student Assistance within the Bureau of Health Professions, Health Resources and Services Administration.

Under HB-10, Organization and Functions, amend the following functional statements within HRSA.

1. Under the *Bureau of Health Professions (HBP1, Office of Data Analysis and Management (HBP15)*, delete the functional statement and replace with the following:

Office of Data Analysis and Management (HBP15). Serves as the Bureau focal point for health professions data policy analysis, coordination and development of health professions data collection and analytical activities, and data and information systems management. Specifically: (1) Provides policy guidance and technical support and advice to the Office of the Director in the establishment and conduct of a cohesive and comprehensive Bureau analytical program involving both intramural and contract activities; (2) provides technical expertise to all Bureau components on methodologies for data collection, data development, forecasting, data analysis, and interpretation; (3) develops and conducts research on data collection and analytic methodologies, economic forecasting, and health personnel systems modeling, both intramurally and through contracts; (4) provides technical and other assistance and expertise to other Bureau components for the purpose of modifying, refining, updating, and developing health professions forecasting models employed in the preparation of forecasts and reports; (5) plans, coordinates, and reviews the development of health professions reports and studies which involve cross-discipline analysis or multiple Bureau components in their preparation; (6) develops, plans for, assembles, coordinates and directs ad

hoc task forces consisting of various Bureau components for planning and completing multi-discipline and cross-cutting studies, surveys, fact books and black books, and major reports on health professions for the Bureau, Agency, Department, and others; (7) prepares technical reviews and data policy impact analyses of health professions studies, reports, and activities performed by other Bureau and non-Bureau components; (8) maintains the Bureau computerized health professions analytic data bases and data base system and maintains and develops associated software systems for managing and accessing the data base, through use of intramural and contract mechanisms. Compiles, integrates coordinates and provides to non-Bureau organizations data collected and compiled by the Office, other Bureau components and sources outside the Bureau into the Bureau analytic and information databases, and provides technical assistance to other Bureau components to aid them in accessing and utilizing the data base in their program activities; (9) maintains and updates the Bureau's computerized program information system, and maintains and develops associated software systems for managing and accessing the system, through both intramural and contract activities. Prepares program management reports and provides technical consultation and assistance to Bureau and Agency staff as well as congressional, academic, research, and other private and public organizations concerning Bureau program data; and (10) maintains liaison with governmental, professional, voluntary, and other public and private organizations, institutions, and groups for the purpose of providing information exchange and assessing health professions data availability and needs related to cross-cutting Bureau activities.

2. Under the *Bureau of Health Professions (HBP), Division of Student Assistance (HBP5)*, amend item number (9) to read: "(9) develops program data needs, formats, and reporting requirements, including collection, collation, analysis and dissemination of data."

Under HB30, Delegations of Authority: All delegations and redelegations of authorities to officers and employees of HRSA which were in effect immediately prior to the effective date of this transfer are continued in effect in them or their successors pending further redelegation, provided they are consistent with this transfer.

Date: April 21, 1989.

John C. West,
Acting Director, Office of Management.

[FR Doc. 89-10709 Filed 5-3-89; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Redelegation of Authority Under Section 218(s) of the Social Security Act, as Amended

The Secretary of Health and Human Services (the Secretary) has the authority under section 218(s) of the Social Security Act (the Act), as in effect prior to the enactment of section 9002 of Pub. L. No. 99-509 (the Omnibus Budget Reconciliation Act of 1986), to review an appeal filed by a State¹ concerning an assessment of an amount due by the State, a disallowance of the State's claim for a credit or refund of an overpayment, or an allowance to the State of a credit or refund of an overpayment. These decisions arise under the agreement between the State and the Secretary, under section 218 of the Act, providing for Social Security coverage of specified State and local Government employees. Under section 218(s), the Secretary also has authority to allow additional time for the State to file the request for review. On the basis of evidence obtained by, or submitted to, the Secretary, the Secretary shall render a decision affirming, modifying or reversing the assessment, disallowance or allowance being appealed by the State.

On April 16, 1968 (33 FR 5836-37), the authority and responsibility conferred upon the Secretary by section 218(s) was delegated to the Commissioner of Social Security (the Commissioner), with the reservation that section 218(s) review authority shall be exercised only by the Commissioner. Except for this reservation of authority pertaining to section 218(s) review authority, the Commissioner was authorized to redelegate, without restriction, the authority to grant extensions of time to a State for filing additional information or argument in connection with a request for review under section 218(s). On February 3, 1981, the then Acting Commissioner redelegated authority for granting such extensions to appropriate Social Security Administration (SSA) management positions.

¹ For purposes of section 218 of the Act, an interstate instrumentality is treated, to the extent practicable, as a "State."

As the Secretary found that the reservation against redelegation of section 218(s) review authority was not in the best interests of the timely, economical and effective management and administration of the section 218(s) appeals process, he removed this reservation of authority effective on December 27, 1988 (53 FR 52236). With the removal of this reservation of authority, the Commissioner is authorized, under the delegations of authority published on April 16, 1968 (33 FR 5836-37), to redelegate to appropriate SSA management positions the authority to review and decide an appeal filed by a State pursuant to section 218(s) of the Act. Accordingly, I hereby redelegate section 218(s) review and decision authority to SSA's Deputy Commissioner for Programs (DCP). This redelegation is effective on the date that it is published in the **Federal Register**. I affirm and ratify any actions by the DCP which may constitute the exercise of section 218(s) review and decision authority after December 26, 1988 and before the date that this redelegation is published in the **Federal Register**. Further redelegations of this authority by the DCP are not authorized.

Dated: April 24, 1989.

Dorcas R. Hardy,
Commissioner of Social Security.

[FR Doc. 89-10684 Filed 5-3-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-1980]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: April 28, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Previous Participation Certificate.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collected will be used to evaluate the feasibility of applications for multifamily projects with respect to previous track and experience records of the applicants as owners, managers, consultants, and general contractors.

Form Number: HUD-2530 and USDA FmHA 19944-37.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---------------|--------------------------|---|--------------------------|---|-----------------------|---|--------------|
| HUD-2530..... | 9,000 | | 1 | | 0.6 | | 5,400 |

Total Estimated Burden Hours: 5,400.

Status: Extension.

Contact: Bruce J. Weichmann, HUD, (202) 755-5094, John Allison, OMB, (202) 395-6880.

Date: April 28, 1989.

Proposal: Urban Homesteading Program.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: HUD collects application and funding needs data in order to provide program benefits. In addition, community development, racial/ethnic, income range, funds usage, and housing rehabilitation data are essential to meet the statutory requirements that HUD needs to provide an annual report to Congress and conduct continuing

evaluations of the Urban Homesteading Program.

Form Number: HUD-40050, 40063, 40063-A.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping, on Occasion, Annually, and Quarterly.

Reporting Burden:

| | Number of Respondents | x | Frequency of Response | x | Hours per Response | = | Burden Hours |
|---|--------------------------|---|--------------------------|---|-----------------------|---|--------------|
| SF-424..... | 20 | | 1 | | 30 | | 600 |
| Application Amendments..... | 13 | | 1 | | 4 | | 52 |
| Annual Request for Program Participation..... | 112 | | 1 | | 2.33 | | 260 |
| HUD-40050..... | 528 | | 1 | | .25 | | 132 |
| HUD-40063-A..... | 528 | | 1 | | .50 | | 264 |
| Quarterly Property Report..... | 176 | | 1 | | .25 | | 44 |
| Quarterly Progress Report..... | 768 | | 1 | | 1 | | 768 |

Total Estimated Burden Hours: 2,120.

Status: Extension.

Contact: Lou Thompson, HUD, (202) 755-5324, John Allison, OMB, (202) 395-6880.

Date: April 27, 1989.

FR Doc. 89-10731 Filed 5-3-89; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. N-89-1981]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records: HUD/DEPT-28 Property Improvement and Manufactured (Mobile) Home Loans—Default.

EFFECTIVE DATE: This amendment shall become effective without further notice in 30 calendar days (June 4, 1989) unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and

Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: John T. Murphy, Acting Departmental Privacy Act Office, Telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/DEPT-28 contains records of debtors who defaulted on Property Improvement and Manufactured (Mobile) Home Loans insured by the Department. At default, HUD takes over the loan and begins collecting payments monthly. The Deficit Reduction Act of 1984 provides for the collection and deposit of payments to executive agencies by electronic methods. One of these methods is the collection of debts by a preauthorized debit to a HUD debtor's account. This method is voluntary and can be effected when the account holder gives the agency the transit number of his/her financial institution and his/her individual account number. This information is then stored in the appropriate system and used on the payment date to create a tape listing of all financial institutions and accounts to be debited. The Department plans to allow for the collection of Property Improvement and Manufactured (Mobile) Home Loans Default debts by a preauthorized debit to a debtor's account.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses

applicable to all of the Department's systems of records were published in the "Federal Register Privacy Act Issuances, 1986 Compilation, Volume II."

Authority: 5 U.S.C. Section 552a, 88 Stat. 1896; Section 7(d) Department of HUD Act (42 U.S.C. Section 3535(d)).

Issued at Washington, DC April 30, 1989.

Donald J. Keuch, Jr.,
Deputy Assistant Secretary for Administration.

HUD/DEPT-28

SYSTEM NAME:

Property Improvement and Manufactured (Mobile) Home Loans—Default.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, credit application, Social Security Numbers where available, case histories of borrowers; records of payments; financing statements, notes; mortgages and other evidences of indebtedness; delinquent and defaulted loan records and account cards; financial institution names and routing numbers, debtor's account numbers; collection and field reports; records of claims and chargeoffs; creditor requests for collection assistance; justifications for closing collection action; related correspondence and documents.

[FR Doc. 89-10732 Filed 5-3-89; 8:45 am]

BILLING CODE 4210-01

Office of Administration

[Docket No. N-89-1979]

Submission of Proposed Information Collections to OMB**AGENCY:** Office of Administration, HUD.
ACTION: Notices.**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.**ADDRESS:** Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a

toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the

proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: April 26, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB**Proposal:** Recertification of Family Income and Composition**Office:** Housing**Description of the Need for the****Information and its Proposed Use:** Homeowners submit these forms to the mortgagees to determine their continued eligibility for assistance and the amount of assistance a homeowner is to receive. Mortgagees use the form to report statistical and general program data to HUD.**Form Number:** HUD-93101 and 93101-A**Respondents:** Individuals or Households, State or Local Governments, Businesses or Other For-Profit**Frequency of Submission:** On Occasion
Reporting Burden:

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|-------------|--------------------------|---|--------------------------|---|-----------------------|---|-----------------|
| HUD-93101 | 150,000 | | 1.25 | | 1 | | 187,500 |
| HUD-93101-A | 962 | | 12 | | .17 | | 1,962 |

Total Estimated Burden Hours: 189,462**Status:** Existing**Contact:** Florence Brooks, HUD, (202) 755-7330; John Allison, OMB, (202) 395-6880**Date:** April 26, 1989.**Notice of Submission of Proposed Information Collection to OMB****Proposal:** Broker's Accounting Reports**Office:** Administration**Description of the Need for the****Information and Its Proposed Use:**

These forms will be used to monitor HUD agents, Area Management Brokers, to determine the performance and accountability of the brokers. They also will ascertain that disbursements, collections, and

receivables are handled in accordance with management contract.

Form Number: HUD-2700, 2700a, 2700b, 2751**Respondents:** Businesses or Other For-Profit**Frequency of Submission:** Monthly
Reporting Burden:

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|-----------|--------------------------|---|--------------------------|---|-----------------------|---|-----------------|
| HUD-2700 | 383 | | 12 | | 1 | | 4,596 |
| HUD-2700a | 383 | | 12 | | 1 | | 4,596 |
| HUD-2700b | 383 | | 12 | | 1 | | 4,596 |
| HUD-2751 | 383 | | 12 | | 1 | | 4,596 |

Total Estimated Burden Hours: 18,384**Status:** Extension**Contact:** Doris J. Neubert, HUD, (202) 755-5139; John Allison, OMB, (202) 395-6880.**Date:** April 26, 1989.**Notice of Submission of Proposed Information Collection to OMB****Proposal:** Public Housing Child Care Demonstration Program (FR-2467)**Office:** Public and Indian Housing**Description of the Need for the****Information and Its Proposed Use:** The Public Housing Child Care

Demonstration Program will provide grants to non-profit organizations to assist in establishing child care facilities in lower income housing projects. The grant will also cover certain operating expenses as well as provide funds for renovating child care facility.

Form Number: None
 Respondents: State or Local
 Governments, Non-Profit Institutions,

and Small Businesses or
 Organizations

Frequency of Submission:
 Recordkeeping and On Occasion
 Reporting Burden:

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|--------------------------|---|--------------------------|---|-----------------------|---|-----------------|
| Child Care Expenditures..... | 65 | | 1 | | 768 | | 49,920 |
| Annual Performance Report..... | 65 | | 1 | | 48 | | 3,120 |
| Reports to HUD..... | 65 | | 1 | | 64 | | 4,160 |
| Form HUD 50058 (Grantees and Participants)..... | 650 | | 1 | | .16 | | 104 |
| General Application..... | 300 | | 1 | | 100 | | 30,000 |
| Grantee Certification..... | 65 | | 1 | | 1 | | 65 |
| Recordkeeping..... | 65 | | 1 | | 5 | | 325 |

Total Estimated Burden Hours: 87,694
 Status: Revision
 Contact: Janice Rattley, HUD, (202) 755-
 1800; John Allison, OMB, (202) 395-
 6880
 Date: April 26, 1989.
 [FR Doc. 89-10621 Filed 5-3-89; 8:45 am]
 BILLING CODE 4210-01-M

[Docket No. N-89-1978]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
 ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension,

reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: April 21, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Application for
 Insurance Benefits

Office: Administration

Description of the Need for the
 Information and Its Proposed Use:

This form will be used to provide the Department information needed to process and pay claims on defaulted FHA insured home mortgage loans.

Form Number: HUD-27001, Parts A, B, C, D, and E

Respondents: Businesses or Other For-Profit

Frequency of Submission: On Occasion
 Reporting Burden:

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|--------------------------|---|--------------------------|---|-----------------------|---|-----------------|
| HUD-27001, Parts A, B, C, D, and E..... | 8,000 | | 13.75 | | 1.33 | | 146,300 |
| Recordkeeping..... | 8,000 | | 1 | | .50 | | 4,000 |

Total Estimated Burden Hours: 150,300
 Status: Extension
 Contact: John A Chin, HUD, (202) 755-
 5163; John Allison, OMB, (202) 395-
 6880
 Date: April 21, 1989.
 [FR Doc. 89-10622 Filed 5-3-89; 8:45 am]
 BILLING CODE 4210-01-M

**Assistant Secretary for Housing—
Federal Housing Commissioner**

[Docket No. N-89-1917; FR-2606]

**Underutilized and Unutilized Federal
Buildings and Real Property
Determined by HUD To Be Suitable for
Use for Facilities To Assist the
Homeless**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: May 4, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The court order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administration of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The court order requires HUD to publish, on a weekly basis, a Notice in the *Federal Register* identifying property determined suitable.

The properties identified in this Notice may ultimately be available for use by public bodies and private nonprofit organizations to assist the homeless. For detailed information on the procedure under section 501(a) that must be followed to apply for use of today's properties, the reader should consult HUD's Notice published February 7, 1988 at 54 FR 6034.

Although not required to do so by either section 501 or the court order, HUD is identifying property, from the information furnished by landholding agencies or GSA, determined unsuitable for use for facilities to assist the homeless, along with the reason for the finding. The court order prohibits the sale, transfer, or other disposition of property found unsuitable for a period of two weeks following the determination.

The contact for GSA properties listed in today's Notice is James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535-7067. Please refer to the GSA identification number of the property. (This is not a toll-free telephone number.)

Dated: April 27, 1989.

James E. Schoenberger,
General Deputy, Assistant Secretary for
Housing—Federal Housing Commissioner.

Excess and Surplus Property (GSA)

Suitable Land

US Army Corps of Engineers, Currituck,
NC
Portion-Whitney Lake, 819 Taylor Street,
Fort Worth, TX 76102—Property No.
7-D-TX-505-K

Suitable Buildings

Brandon Road Lock and Dam, 1160
Brandon Road, Joliet, IL 60436
Portion-Punta Borinquen, US Reserve
Center, Aquadilla, PR

Comment: Homeless care provider has
already officially expressed interest.

Unsuitable Land

Alabama Army Ammunition Plant,
Childersburg, AL

Reason: Within 2000 ft. from
flammable or explosive material;
Property No. 4-D-AL-474-K.

Unsuitable Buildings

FAA ARSR Site, Wilson County, TX

Reason: Not accessible by road,
Property No. 7-W-TX-996.

[FR Doc. 89-10620 Filed 5-3-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-09-4212-17]

**Emergency Area Closure; Riverside
County, California**

Emergency Area Closure

The following order, affecting: SBM, T. 7S.,
R. 14E., Sec. 22, Sec. 26: N½, Sec. 28: N½ will
be issued May 1, 1989.

I have determined that current use of
this area is causing environmental
degradation and is a serious threat to
public safety. This problem is the result
of a group using the area as a base of
operations for "Scrapping". This activity
has caused damage to the environment
from cross-country vehicle travel, has
caused the buildup of trash, scrap metal,
and occasionally unexploded ordinance.

In order to rectify this situation, I
hereby order that above captioned
public land be closed to entry pursuant
to 43 CFR 8365.1. Persons exempt from
this order shall include law enforcement
personnel and those persons engaged in
retrieving personal property from the
site, or those with other specific
authorization.

Any person who knowingly and
willfully violates this closure may be
subject to \$1,000 fine and/or one year
imprisonment.

This order shall remain in effect until
further notice.

Russell L. Kaldenberg,
Area Manager.

Date: April 28, 1989.

[FR Doc. 89-10740 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-40-M

[OR-110-6310-11 and OR910-GP9-211]

Closure of Public Lands; Oregon

AGENCY: Bureau of Land Management,
Interior.

ACTION: Closure of public lands to public
access.

SUMMARY: Pursuant to 43 CFR 8364.1, the
following-described lands east of Wolf
Creek, Oregon, are closed to all access
by the public. The area affected by this
closure contains 479.48 acres, more or
less.

T. 33 S., R. 5 W., Willamette Meridian,
Oregon.

Sec. 20, N½NE¼SW¼, E½SW¼SW¼,
SE¼SW¼, SE¼;

Sec. 21, Lot 3, NW¼, NW¼SW¼.

The lands shall remain closed from
the date of publication of this notice to
April 28, 1990.

Pursuant to 43 CFR 8364.1, the following persons are exempted from this order:

(1) Employees of Gregory Timber Resources, Inc. or their contractors.

(2) Any Federal, State or Local officer in the performance of an official duty.

The purpose of this closure is to protect public safety while Gregory Timber Resources, Inc., is conducting timber harvest activities in the area.

FOR FURTHER INFORMATION CONTACT: Robert Korfhage, Glendale Area Manager, (503) 770-2200, 3040 Biddle Road, Medford, Oregon 97504.

Dated: April 28, 1989.

David A. Jones,
District Manager.

[FR Doc. 89-10649 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-33-M

[WY-930-09-4212-11; WYW 80297]

Revocation of Classification and Opening Order; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Revocation of Classification and Opening Order.

SUMMARY: This order partially revokes Recreation and Public Purposes Act (R&PP) Classification WYW 80297 and opens certain land to the operation of the public land and mining laws. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-772-2074.

SUPPLEMENTARY INFORMATION:

1. The following described land was classified for lease and/or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. 869, et seq. (1982), by Classification Order WYM 80297 dated February 22, 1984, for use as a public cemetery:

Sixth Principal Meridian

T. 50 N., R. 66 W.,

Sec. 5, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 20.00 acres in Crook County.

An R&PP Act patent was issued to the Town of Pine Haven, Wyoming, for 10.00 acres of the land in Classification WYW 80297. There are no pending applications or foreseeable needs of the remaining lands in this classification.

2. Classification Order WYW 80297 is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 50 N., R. 66 W.,

Sec. 5, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 10.00 acres.

3. At 10:00 a.m. on June 5, 1989, the land described in Paragraph No. 2 will be opened to operation of the public land laws generally, including the United States mining laws, subject to valid existing rights. Appropriation of any of the land described in this Notice under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C., section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All valid applications received prior to June 5, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

F. William Eikenberry,

Associate State Director.

Date: April 25, 1989.

[FR Doc. 89-10739 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-22-M

[UT-050-09-4920-10-9255]

Environmental Impact Statement for Right-of-Way Application for Electronic Combat Text Capability Facilities

AGENCY: Bureau of Land Management, Richfield District.

ACTION: Notice of intent to cooperate in preparation of environmental impact statement.

SUMMARY: The Air Force has filed a right-of-way application with BLM for use of certain BLM-managed public lands in western Utah for an Electronic Combat Test Capability (ECTC) range. Prior to issuing decisions regarding this application, BLM will consider public input, environmental impacts, and other factors. The Air Force will be the lead Federal agency for preparation of an Environmental Impact Statement (EIS), and BLM will participate as a cooperating agency, as provided for by guidelines of the Council on Environmental Quality.

SUPPLEMENTARY INFORMATION: The proposed project would be located in Millard and Juab Counties. Applicable

BLM land use plans are the Warm Springs Resource Management Plan (RMP) and the House Range RMP. Both these plans provide for the issuance of rights-of-way on a case-by-case basis; therefore, BLM plan amendments would not be required.

The project EIS will address various issues pertaining to public lands managed by BLM. These issues include cultural, socio-economic, vegetation, soil, water, and air resources, as well as wilderness, wildlife, wild horses, and land uses. Scoping for the project EIS was as described in the Air Force Federal Register Notice of October 7, 1988 (Volume 53, Number 195, Page 39498).

Date: April 28, 1989.

Jerry W. Goodman,

District Manager.

[FR Doc. 89-10741 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-060-09-5440-10 ZBAF]

Indemnity Selection; Subsequent Low-Level Radioactive Waste Disposal Site; San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and the California Department of Health Services (DHS) will prepare a joint Federal-State Environmental Impact Report/Statement (EIR/S) for a proposed State of California indemnity selection that upon conveyance and issuance of all applicable licenses and permits would be utilized as a low-level radioactive waste (LLRW) disposal site.

The State of California has filed an application for two parcels of land which are in San Bernardino County. The parcels are located:

Parcel 1: The Ward Valley parcel is at the north end of Ward Valley, approximately 23 miles west of the City of Needles and one mile south of Interstate 40.

Parcel 2: The Silurian Valley parcel is about 18 miles north of the town of Baker and about three and one-half miles east of State Highway 127.

Upon conveyance to the State of California through the State Indemnity Selection process, the selected parcel would be utilized as a land burial disposal site for LLRW. The site would serve the Southwestern Compact states of California, Arizona, South Dakota, and North Dakota. Under the Federal LLRW Policy Act as amended in 1985,

states are responsible for disposal of LLRW, and California will serve the disposal needs of the compact states for the first thirty years. California law requires a disposal site be developed under DHS regulations.

The two sites were identified by U.S. Ecology, Inc., the State of California's license designee. The Ward Valley site is the proposed location with the Silurian Valley site is considered as the alternative location.

LLRW is generated by utilities, hospitals, universities, biomedical research facilities, and industry. LLRW comprises solid wastes such as contaminated tools, glassware, protective clothing, paper and other items, and wet wastes such as aqueous solutions and filtration sludges. All wet wastes must be dewatered, solidified or packaged in absorbent material before disposal. By regulation, liquid waste cannot be received for disposal. LLRW does not include high-level radioactive waste such as spent fuel rods from nuclear power plants or waste from nuclear weapons production which are the responsibility of the Federal Government. Waste will be transported from the waste generator or a brokerage firm to the disposal site by means of common carriers or by waste brokers, consistent with current practice under U.S. Department of Transportation regulations. Rail transport may also be used in the future. The operating life of the disposal site is anticipated to be 30 years. The long-term-care period and environmental monitoring of the disposal site by the State of California will continue for 100 years after closure period of about five years following the termination of waste disposal.

Three organizations are directly involved: BLM, DHS, and the State of California Lands Commission (SLC). The proposed and alternative sites are on public land managed by the BLM. Since BLM managed public land is not utilized for LLRW disposal, it will be acquired through SLC under the State Indemnity Selection and transferred to DHS. DHS will license and regulate the site. In order to minimize duplicate effort, BLM and DHS have agreed to prepare a joint EIR/S. The document will consider various topics, including surface water drainage, groundwater, seismicity and geologic considerations, wildlife, vegetation, cultural resources, land use, transportation, noise, visual impacts and other items.

Four public scoping meetings will be held to identify public concerns and issues which should be addressed by the EIR/S in addition to those already described. Locations and dates are:

May 30, 1989, 10:00 a.m.—Howard Johnson Motor Inn, Oakwood Room, 1199 University Avenue, Riverside, California.

May 30, 1989, 7:00 p.m.—Barstow Station Inn, 1511 E. Main Street, Barstow, California.

May 31, 1989, 7:00 p.m.—Baker Community Center, Baker, California.

June 1, 1989, 7:00 p.m.—Needles School District Board Room, 1900 Erin Drive, Needles, California.

Comments in writing will be accepted if received on or before the end of comment period, June 12, 1989.

FOR FURTHER INFORMATION CONTACT:

Gerald E. Hillier, District Manager, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, CA 92507.

Gerald E. Hillier,
District Manager.

Date: April 24, 1989.

[FR Doc. 89-10698 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-40-M

[UT-940-09-4212-11; UO-015519]

Classification Termination and Opening Order, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates small tract classification UO-015519 and opens the land to disposal pursuant to section 203 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2743.

EFFECTIVE DATE: May 8, 1989.

FOR FURTHER INFORMATION CONTACT:

Mike Barnes, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303 (801) 539-4119.

1. Pursuant to 43 CFR 2091.7-1(b)(2) and the authority delegated by BLM Manual section 1203 (48 FR 85), the Bureau of Land Management hereby terminates small tract classification UO-015519 embracing the following described lands:

Salt Lake Meridian

T. 36 S., R. 16 E.,
Sec. 28, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 5 acres located in San Juan County.

2. At 9:00 a.m. on May 8, 1989, the lands described in paragraph one shall be opened to disposal pursuant to the section 203 of the Federal Land Policy and Management Act of October 21, 1976, subject to any valid existing rights,

and the requirements of applicable laws, rules and regulations.

Ted D. Stephenson,
Chief, Branch of Land and Mineral Operations.

[FR Doc. 89-10645 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-942-09-4212-19; U-65091]

Public Lands, and Interest in Lands, Held In Trust for the Confederated Tribes of the Goshute Indians

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Pub. L. 100-708 (102 Stat. 4717) dated November 23, 1989, certain public lands, and interest in lands, as depicted on maps contained in the Eastern Nevada Agency Office, Bureau of Indian Affairs, 1555 Shoshone Circle, Elko, NV, 89801, the Tribal Headquarters of the Confederated Tribes of the Goshute Indian Reservation, Ibapah, UT, 84034, the Utah State Office, Bureau of Land Management, 324 South State, Salt Lake City, UT, 84111, the Salt Lake District Office, Bureau of Land Management, 2370 South 230 West, Salt Lake City, UT, 84119, and the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, UT, 84701, are held in trust by the United States for the benefit of the Confederated Tribes of the Goshute Indians and are part of the Tribes' reservation.

FOR FURTHER INFORMATION CONTACT: J. Darwin Snell, Utah State Office, Bureau of Land Management, 324 South State, Salt Lake City, UT 84111, 801-539-4102.

1. The public lands, and interests in lands, are described as follows:

Surface and Subsurface (Fee)

T. 10 S., R. 19 W., SLM

Sec. 4, Lots 3 and 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$;

Sec. 9, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The areas described aggregate 354.64 acres in Tooele County.

T. 11 S., R. 20 W., SLM

Sec. 1, All;

Sec. 12, Lots 1-4, NE $\frac{1}{4}$, NE $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 13, Lots 1-4, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 24, All;

Sec. 25, All.

T. 12 S., R. 20 W., SLM

Sec. 1, All;

Sec. 12, Lots 1 and 2

The areas described aggregate 1753.51 acres in Juab County.

Subsurface (All Minerals)

T. 9 S., R. 19 W., SLM
Sec. 34, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described aggregate 80 acres in Tooele County.

T. 12 S., R. 19 W., SLM

Sec. 28, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

Sec. 29, W $\frac{1}{2}$ E $\frac{1}{2}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 30, S $\frac{1}{2}$ NE $\frac{1}{4}$

T. 12 S., R. 20 W., SLM

Sec. 12, Lots 3 and 4;

Sec. 13, All;

Sec. 24, All.

The areas described aggregate 960.99 acres in Juab County.

Subsurface (Oil and Gas only)

T. 9 S., R. 19 W., SLM

Sec. 22, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 10 S., R. 19 W., SLM

Sec. 4, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$

The areas described aggregate 45 acres in Tooele County.

The total area described aggregate 2108.15 acres of surface and subsurface (Fee), 1040.99 acres of subsurface (All Minerals) and 45 acres of subsurface (Oil and Gas only) in Utah.

Ted D. Stephenson,

Chief, Branch of Lead and Mineral Operation.

[FR Doc. 89-10646 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-060-09-4120-13]

Availability of Lithologic Logs and Sound Velocity Measurements of Unleased Federal Coal Near Rawhide Village, Campbell County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice of availability of three lithologic logs and sound velocity measurements of Wyodak Coal near the Rawhide Village, NE $\frac{1}{4}$ SE $\frac{1}{4}$, section 20, T. 51 N., R. 72 W., Campbell County, Wyoming.

SUMMARY: Notice is hereby given that three lithologic logs and one sound velocity measurement report of Wyodak coal bed near the Rawhide Village, Campbell County, Wyoming, are now available to the public.

The test holes, located in Township 51 North, Range 72 West, section 20, were designed to provide information concerning the methane gas problems associated with Rawhide Village.

Reproduction of the logs and report are available at cost from the Casper District, Branch of Solid Minerals.

FOR FURTHER INFORMATION CONTACT: Edward Coy, Chief, Branch of Solid

Minerals, Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601, telephone (307) 261-5598.

Mike Karbs,

Associate District Manager.

Dated: April 25, 1989.

[FR Doc. 89-10742 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-22-M

[(OR-030-09-3110-10-8006: GP9-206)]

Public Land Exchange; Reality Actions; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reality Action—Exchange of Public Lands in Harney County, Oregon.

SUMMARY: The Bureau of Land Management (BLM) in the State of Oregon, Burns District, in considering an exchange of the following public lands under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 39 S., R. 37 E., W.M., Oregon

Sec. 2, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 10, All;

Sec. 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 15, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$.

The area described above aggregates approximately 1,240 acres.

In exchange for these lands, the Federal Government will acquire the following described private land from Gary R. Defendbaugh and Doris I. Defendbaugh:

T. 39 S., R. 37 E., W.M., Oregon

Sec. 14, NW $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 16, N $\frac{1}{2}$ N $\frac{1}{2}$;

Sec. 35, NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 38, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$.

The area described above aggregates approximately 320 acres.

The purpose of this exchange is to acquire important riparian habitat within the Mahogany Ridge Wilderness Study Area, and to acquire access along the major route into the Trout Creek Mountains.

The land values will be approximately equal, and the acreage will be adjusted to equalize the values upon completion of the land appraisal.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights,

including but not limited to any right-of-way, easement, or lease of record.

The publication of this notice in the *Federal Register* will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis will be available for review at the Burns District Office, HC 74-12533, Highway 20 West, Hines, Oregon 97738.

For a period of 45 days from the date of publication of this notice in the *Federal Register* interested parties may submit comments to the Burns District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this reality action. In the absence of any objections, this reality action may become the final determination of the Department of the Interior.

Dated: April 28, 1989.

Joshua L. Warburton,

Burns District Manager.

[FR Doc. 89-10743 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-010-09-6350-02: GP9-205]

Oregon: Notice of Intent To Prepare a Resource Management Plan and Environmental Impact Statement for the Klamath Falls Resource Area

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to prepare a resource management plan and environmental impact statement for the Klamath Falls Resource Area.

SUMMARY: The Klamath Falls Resource Area of the Lakeview District is beginning preparation of a resource management planning effort and Environmental Impact Statement (EIS), scheduled for completion in 1991. The approved Resource Management Plan (RMP) is expected to provide overall management direction for a period of 10 years.

The RMP will be developed by an interdisciplinary team composed of BLM resource specialists. The team will have a team leader and specialists in realty, wildlife (including threatened and

endangered animals), forestry, archaeological and cultural resource protection, minerals, soils/hydrology/air, economics, range and vegetation (including threatened and endangered plants).

SUPPLEMENTARY INFORMATION: The Klamath Falls RMP/EIS is needed to consolidate, modify, update, and expand the decisions in the existing land use plans, or Management Framework Plans (MFPs), completed in 1979 and 1983. In September 1987 the Medford District's east boundary was moved west from Highway 97 to the Jackson/Klamath County line. The planning on these 52,000 acres was completed in 1979. The Lakeview District now manages the BLM lands between Highway 97 and the Jackson/Klamath County line. The planning on the 161,000 acres of BLM-administered lands in the Resource Area east of Highway 97 was completed in 1983 and was amended in 1988 with regard to retention, exchange and disposal of lands.

The Klamath Falls Resource Area is now responsible for surface management of BLM-administered lands on approximately 213,000 acres in southern Klamath County. Klamath County is located in south central Oregon.

The Resource Area is bounded by the California-Oregon state line on the south, the Fremont and Winema National Forests on the north and east and Jackson-Klamath County line on the west. Bureau-administered lands located in the extreme northern portions of Klamath County are currently managed by the Prineville District.

Initial scoping for the plan and environmental impact statement took place for the western Klamath County lands (west of Highway 97) with the Notice of Intent to prepare a Medford District-wide Resource Management Plan, as published in the *Federal Register*, vol. 51, No. 167, Thursday, August 28, 1986.

Public participation is being sought at this initial step in the planning process to ensure the RMP/EIS addresses all appropriate issues, problems, and concerns of anyone interested in the management of the Resource Area.

Issues and concerns identified by BLM, arising since the completion of the MFPs in 1979 and 1983, have been grouped into the following categories: Timber production practices, old growth forests and habitat diversity, threatened and endangered species habitat, special areas (areas with important historic, cultural, scenic, botanical values or natural systems or natural hazards), visual resources, streams, riparian areas

and water quality, recreation resources (including wild and scenic rivers), land tenure west of Highway 97, livestock grazing and wild horse herd management, and rural interface area management.

Comments and input on planning for management of lands in the entire Klamath Falls Resource Area are requested by June 19, 1989. Also, a RMP open house will be held for the public to identify potential issues and concerns to the planning team. The open house will be held at the Klamath Falls office on June 5, 1989. Times will be from 1:00 p.m. to 4:00 p.m. and from 7:00 p.m. to 9:00 p.m. District and Resource Area staff are also willing to meet with individual groups on an informal basis, if requested, any time before the close of the comment period. A scoping notice with additional information has been mailed to all known interested parties and is available upon request.

Comments and input will be solicited throughout the RMP/EIS process, however initial input on issues and concerns on areas that might meet criteria for Areas of Critical Environmental Concern to be considered should be submitted to the Lakeview District Manager by the end of this scoping period. Formal public participation will be requested again for comment on a summary of the Analysis of the Management Situation (by early next year), the draft RMP/EIS (late 1990) and proposed RMP/final EIS (1991). Notice of availability of the EIS documents will be published at the appropriate times in the *Federal Register* and copies sent to interested parties.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Planning and Environmental Coordinator, Lakeview District Office, 1000 South 9th St., P.O. Box 151, Lakeview, OR 97630, Phone 503-947-2177 during the hours of 7:45 a.m.-4:30 p.m., Mon.-Fri., or Steve Sherman, Area Manager, Klamath Falls Resource Area, 2795 Anderson Ave., Bldg. 25, P.O. Box 369, Klamath Falls, OR 97601, Phone 503-883-6916 during above hours.

Documents relevant to this planning effort will be available for public review at the Klamath Falls Resource Area office during normal working hours.

Dated: April 24, 1989.

Robert J. Rivers,
Acting State Director.

[FR Doc. 89-10693 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-33-M

[ES-940-09-4520-13 and ES-039974, Group 136]

The Filing of Plat of Dependent Resurvey and Subdivision of Section 18, Stayed; Wisconsin

April 19, 1989.

On Thursday, March 9, 1989, there was published in the *Federal Register*, Volume 54, Number 45, on page 10055 a notice entitled "Wisconsin, Filing of Plat of Dependent Resurvey and Subdivision of Section 18". In said notice was a plat depicting the dependent resurvey of a portion of the exterior boundaries, a portion of the subdivisional lines, and the survey of the subdivision of section 18, Township 40 North, Range 6 East, Fourth Principal Meridian, Wisconsin, accepted on February 24, 1989.

The official filing of the plat is hereby stayed, pending consideration of a protest.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 89-10744 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-GJ-M

[AZ-920-09-4214-10, A-23853]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

April 28, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation, Federal Aviation Administration (FAA) has filed application A-23853 to withdraw approximately 100 acres of public land for the purpose of relocating an existing VORTAC facility. Relocation of the facility is required due to disturbance created by highway relocation. This notice closes the lands for up to 2 years from location and entry under the United States mining and public land laws. The lands presently are and will remain open to the mineral leasing laws.

DATE: Comments and requests for a meeting should be received on or before August 2, 1989.

ADDRESS: Comments and meeting requests should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602 241-5515.

SUPPLEMENTARY INFORMATION: On April 4, 1989, the FAA filed the application to

withdraw the following described public land from application, location and entry under the United States public land laws and the mining laws, subject to valid existing rights.

A portion of the land is presently under a Bureau of Reclamation withdrawal and a Recreation and Public Purpose application. The land applied for under application A-23853 is described as follows:

Gila and Salt River Meridian

T 1 N., R. 4 E.,
sec. 17, N $\frac{1}{2}$.

The area described aggregates 320 acres in Maricopa County.

While the application is for 320 acres, the actual withdrawal will be for less than 100 acres. To date, the exact location of the proposed improvements within the N $\frac{1}{2}$ is yet to be determined; therefore, we are segregating the entire N $\frac{1}{2}$. Publication for the N $\frac{1}{2}$ at this time will give the public an opportunity for comments and the applicant the flexibility to move within an area and assure the best location.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the subject withdrawal must submit a written request to the undersigned offer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied, or canceled or the withdrawal is approved prior to that date. Only temporary uses allowable under short term permits may be permitted during this segregative period.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Transportation, Federal Aviation Administration.

Larry P. Bauer,

Deputy State Director, Mineral Resources.

[FR Doc. 89-10745 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Coastal Barrier Resources Act (P.L. 97-3458); Section 4(c)(3)—Five year review and modifications to the Coastal Barrier Resources System as a result of natural forces

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Proposed Change in Coastal Barrier Resources System.

SUMMARY: Under the Coastal Barrier Resources Act, the Secretary of the Interior is required to review the maps of the Coastal Barrier Resources System (System) at least once every five years and make any minor and technical modifications to the boundaries of System units that the Secretary determines are necessary to reflect changes occurring as a result of natural forces. This notice announces the proposed findings of the first such review of the System since the passage of the Act.

DATE: Comments should be received on or before July 3, 1989.

ADDRESSES: Comments should be directed to Mr. Frank McGilvrey, Coastal Barrier Coordinator, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (703/358-2095).

SUPPLEMENTARY INFORMATION: Section 4 of the Coastal Barrier Resources Act (Act) established the Coastal Barrier Resources System as referred to and adopted by Congress. Section 4(c)(3) states that the Secretary shall conduct a review of the maps of the System at not less than 5-year intervals, and make, in consultation with appropriate Federal and State officials, such minor and technical modifications to unit boundaries as may be necessary to reflect changes caused by natural forces. Secretarial Order 3093 delegated responsibility for section 4 to the Fish and Wildlife Service (Service) on April 28, 1983.

The Service contracted with the National Aeronautic and Space Administration to photograph all units of the System in 1987 and 1988 using infra-red photography at 1:65,000. This photography was compared with 1982 photography to detect changes that may have occurred due to natural forces. The Service has decided to consider only changes caused by natural forces that exceed 5 percent of the fastland (that area above high tide).

Upon completion of this review, only one unit, K03, Cedar Island, Virginia, was found to meet this criterion. A spit on the north end of the unit is prograding sufficiently that the Service

proposes to modify the boundary to encompass the accreted area.

A map showing the proposed boundary change is available from Mr. Frank McGilvrey listed in the addresses caption. This map showing the proposed change has been provided to the appropriate officials, including the House Merchant Marine and Fisheries Committee, Senate Environment and Public Works Committee, affected Virginia congressional members, and State and local officials.

Date: April 19, 1989.

Susan R. Lamson,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-10542 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-55

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-736886

Applicant: Ronald Edward Provience, La Mesa, CA.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-737035

Applicant: Primarily Primates, Inc., San Antonio, TX.

The applicant requests a permit to import one female chimpanzee (*Pan troglodytes*) from the Monrovia Zoo, Monrovia, Liberia, for purposes of socialization and rehabilitation necessary for normalcy and possible future release.

PRT-736891

Applicant: J. Peter Hill, Cincinnati, OH.

The applicant requests a permit to purchase one pair of captive-hatched vinaceous amazon parrots (*Amazona vinacea*) from Life Fellowship, Seffner, Florida, and export the birds to Mr. Antonio Dedios, Birds International, Diliman, Quezon City, the Philippines, for captive breeding purposes.

PRT-736876

Applicant: Hawaii Dept. of Land & Natural Resources Honolulu, HI.

The applicant request a permit to export 8 pairs of captive-hatched

Hawaiian ducks (*Anas wyvilliana*) and 8 male and 15 female Laysan ducks (*Anas laysanensis*) to the Wildlife Trust in Slimbridge, England, for propagation purposes. All of the Laysan ducks were hatched in captivity except one female which was removed from the wild on Laysan Island in August 1978.

PRT-736781

Applicant: Wildlife Safari Winston, OR.

The applicant requests a permit to import one pair of captive-born cheetahs (*Acinonyx jubatus*) from Wisenhof Wildlife Park, Klapmuts, Republic of South Africa for enhancement of propagation. The animals will be maintained at Wildlife Safari until Jim Fouts, Tanganyika Wildlife Company, Wichita, KS, has constructed adequate breeding facilities, at which time the animals will be transferred to Tanganyika Wildlife Company.

PRT-736731

Applicant: Leonard Levearl Walston, Mobile, AL.

The applicant requests a permit to export leaves taken from green pitcher plant (*Sarracenia oreophila*) in Mobile, Alabama.

PRT-736973

Applicant: Wyoming Waterfowl Trust, Cody, WY.

The applicant requests a permit to export two (2) male and two (2) female Hawaiian (=nene) geese (*Nesochen* (= *Branta sandvicensis*) that were captive-hatched at their facilities to Miquelon Farms, Ltd., Alberta, Canada, for the purpose of enhancement of propagation.

PRT-715472

Applicant: Dr. John Avise University of Georgia, Athens, GA.

The applicant requests a permit to continue collection and importation of eggs, hatchlings and incidental mortalities of the following sea turtle species to obtain mitochondrial DNA for genetic studies: green sea turtle (*Chelonia mydas*), Pacific green sea turtle (*C. m. agassizi*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempi*), olive ridley (*L. olivacea*) and leatherback turtle (*Dermochelys coriacea*). Researches will collect specimens from nesting beaches throughout the turtles' range.

PRT-737148

Applicant: Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to export one captive-born male ocelot (*Felis pardalis*) to the Zoological Board Victoria, Royal Melbourne Zoological Gardens, Victoria, Australia for the

purpose of exhibition, education and enhancement of propagation.

PRT-737142

Applicant: AAZPA Sumatran Tiger Species Survival Plan c/o, Gerald Brady, Potter Park Zone, Lansing, MI.

The applicant request a permit to import two captive-born males, one captive-born female, and one wild-caught female Sumatran tiger (*Panthera tigris sumatrae*), from the Jakarta Zoological & Botanical Gardens, Jakarta, Indonesia for the purpose of enhancement of propagation.

PRT-736125

Applicant: Baltimore Zoo Baltimore, MD.

The applicant requests a permit to import one wild-caught male white-naped crane (*Grus vipio*), that has been held in captivity since 1977, from the Hong Kong Zoological and Botanical Gardens, Hong Kong for the purpose of enhancement of propagation.

PRT-737149

Applicant: Columbus Zoological Gardens, Powell, OH.

The applicant requests a permit to import three captive-born female cheetahs (*Acinonyx jubatus*) from the Congo Crocodile Ranch & Cheetahland, Oudtshoorn, S. Africa, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22201, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications with 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: April 25, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-10609 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Environmental Statements; Denali National Park and Preserve et al.

ACTION: Notice of public hearings for Draft Environmental Impact Statements for mining in three national park units in Alaska.

Two public hearings will be held by the National Park Service for the Draft Environmental Impact Statements on the cumulative impacts of mining in Denali National Park and Preserve, Wrangells-St. Elias National Park and Preserve, and Yukon-Charley Rivers National Preserve, Alaska.

The public is invited to provide oral or written testimony on the draft environmental impact statements and the ANILCA subsistence 810 evaluations.

One hearing will be held Tuesday, May 16, 1989, at 7:00 p.m., in the Westmark Fairbanks, Gold Room, 813 Noble Street, Fairbanks, Alaska. The second hearing will be held Thursday, May 18, 1989, at 7:00 p.m., in the Holiday Inn Anchorage, Kenai and Kodiak Rooms, 239 West 4th Avenue, Anchorage, Alaska.

Written comments may be submitted to the National Park Service at any time during the 60-day public review period which ends June 15, 1989. Written comments must be sent to the address below.

FOR FURTHER INFORMATION CONTACT:

Floyd Sharrock, Chief, Mineral Management Division, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, telephone (907) 257-2616.

Date: April 27, 1989

Gerald D. Patten,

Associate Director, Planning and Development.

FR Doc. 89-10606 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-70-M

Petrified Forest National Park General Management Plan

SUMMARY: The National Park Service is preparing a General Management Plan for Petrified Forest National Park, Apache and Navajo Counties, Arizona. Major issues to be addressed include consideration of a new visitor center at Painted Desert; modifications at the Rainbow Forest area including relocation of the entrance road, development of a new visitor center, provision of additional parking and relocation of employee housing and maintenance facilities away from the Giant Logs area; and boundary changes along the east and west boundaries of the park. An environmental assessment will be prepared in conjunction with the plan to analyze the potential impacts of the proposed actions.

Contact has been made with local, State and Federal agencies and private individuals and organizations in developing the plan proposals. Any

other parties not contacted are encouraged to provide any views or specific suggestions they may have regarding the future management directions of the park. Please address any such comments and/or any requests for additional information to the Superintendent, Petrified Forest National Park, P.O. Box 217, Petrified Forest NP, AZ 86028. Any comments regarding plan considerations should be received within 60 days of the publication of this Notice.

The draft General Management Plan/Environmental Assessment is expected to be released for public review in October, 1989.

Date: April 24, 1989.

Regional Director, Western Region.

Stanley T. Albright

[FR Doc. 89-10675 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0080), Washington, DC 20503, telephone 202-395-7340.

Title: Training, Examination, and Certification of Blasters.

OMB Number: 1029-0080.

Abstract: Section 719 of Pub. L. 95-87 requires the Secretary of the Interior to issue regulations which provide for the training, examination, and certification of persons engaging in blasting or the use of explosives in surface coal mining operations.

Bureau Form Number: Not applicable.

Frequency: One-time requirement.

Descriptions of Respondents: State Governments.

Estimated Completion Time: 4,160 hours.

Annual Responses: 4.

Annual Reporting Burden: 16,640 hours.

Bureau Clearance Officer: Nancy Ann Baka 202-343-5864.

Date: April 17, 1989.

Judith Saunders,

Acting Chief, Division of Regulatory Development.

[FR Doc. 89-10746 Filed 5-3-89; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-285]

Decision To Review Initial Determination; Chemiluminescent Compositions and Components

In the matter of certain chemiluminescent compositions and components thereof and methods of using, and products incorporating, the same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is given that the Commission has determined to review portions of the presiding administrative law judge's (ALJ's) initial determination (ID) that there is a violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT:

William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone: (202)-252-1116.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to Commission rules 210.53-210.56 (19 CFR 210.53-210.56, as amended). On March 22, 1989, the ALJ issued an ID finding a violation of section 337. No petitions for review or government agency comments have been received.

Having examined the record in this investigation, including the ID, the Commission has concluded that review of portions of the ID is warranted. Specifically, the Commission will review the following issue:

whether respondent Societe Prolufab has contributorily infringed Registered Trademark Nos. 925,341 or 1,141,455.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is

interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist order would have upon (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are subject to the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation, interested government agencies, and any other persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Parties, government agencies, and other persons are not to file submissions pertaining to the issue under review, inasmuch as the Commission believes that the evidence and arguments already included in the record in this investigation provide a sufficient basis for the Commission's consideration of the issue. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Written submissions must be filed by May 8, 1989. Reply submissions must be filed by May 15, 1989.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has

already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202)-252-1810.

By order of the Commission.
Kenneth R. Mason,
Secretary.

Issued: April 24, 1989.

[FR Doc. 89-10637 Filed 5-3-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-289]

Commission Decision Not To Review an Initial Determination Dismissing With Prejudice and Terminating the Investigation With Respect to U.S. Letters Patent 4,367,566; Concealed Cabinet Hinges and Mounting Plates

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 10) issued by the presiding administrative law judge (ALJ) dismissing with prejudice and terminating the above-captioned investigation with respect to U.S. Letters Patent 4,367,566 (the '566 patent).

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1103.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On February 23, 1989, Blum filed a motion for an order dismissing the '566 patent from the investigation, so that the investigation will proceed only on the basis of complainant's other two U.S. patents at issue. Responses to the motion were filed by respondent Agnostio Ferrari S.p.A. and the Commission investigative attorney.

This action is taken under the authority of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (53 F.R. 33070, Aug. 29, 1988).

By order of the Commission.
Kenneth R. Mason,
Secretary.

Issued: April 27, 1989.

[FR Doc. 89-10638 Filed 5-3-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-423 (Final)]

Generic Cephalixin Capsules From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of a final antidumping investigation No. 731-TA-423 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of generic cephalixin capsules, provided for under subheading 3004.20.00 of the Harmonized Tariff Schedule of the United States (formerly provided for in item 411.76 of the Tariff Schedules of the United States). That have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value

(LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before June 19, 1989, and the Commission will make its final injury determination by August 10, 1989, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended, 53 FR 33041 *et seq.* (August 29, 1988) and 54 FR 5220 *et seq.* (February 2, 1989)), and part 201, subparts A through E (19 CFR part 201). **EFFECTIVE DATE:** April 12, 1989.

FOR FURTHER INFORMATION CONTACT: Lisa Zanetti (202-252-1189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of generic cephalixin capsules from Canada are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on October 27, 1988, by Biocraft Laboratories, Inc., Elmwood Park, NJ. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (53 FR 51327, December 21, 1988).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will

be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules, as amended, (19 CFR 201.16(c) and 207.3, as amended), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on June 13, 1989, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 28, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 19, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend

a prehearing conference to be held at 9:30 a.m. on June 23, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 23, 1989.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 5, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 5, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6, as amended, 54 FR 13677 (April 5, 1989) and 207.7, as amended).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such

information no later than July 10, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority.—This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: April 26, 1989.
[FR Doc. 89-10639 Filed 5-3-89; 8:45 am]
BILLING CODE 7020-02-M

[Inv. No. 337-TA-286]

Certain Track Lighting System Components, Including Plugboxes; Commission Determinations Not To Review Initial Determinations

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review two initial determinations (IDs) (Orders Nos. 25 and 26) terminating the above-captioned investigation as to, respectively, Marvin Electric Manufacturing Co., d/b/a Marco (Marco), and Progress Lighting, Inc. (Progress), on the basis of consent orders.

ADDRESSES: Copies of the consent orders, the IDs, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On March 8, 1989, complainant Cooper Industries, Inc. and respondent Marco jointly moved (Motion No. 286-33) to terminate the investigation as to Marco on the basis of a proposed consent order. On March 10, 1989, Cooper and Marco jointly moved (Motion No. 286-

35) to substitute an amended consent order and exhibit 3 thereto and provide supplementary material. The Commission investigative attorney does not object to the substitute proposed consent order. On March 22, 1989, the presiding administrative law judge (ALJ) issued an ID granting the joint motion to terminate the investigation with respect to respondent Marco on the basis of the consent order. The Commission has received no petitions for review of the ID nor any comments from other government agencies or the public.

On March 8, 1989, complainant Cooper Industries, Inc. and respondent Progress Lighting, Inc. (Progress) jointly moved (Motion No. 286-34) to terminate the investigation as to Progress on the basis of a proposed consent order. On March 10, 1989, Cooper and Progress jointly moved (Motion No. 286-36) to substitute an amended consent order and exhibit 3 thereto and provide supplementary material. The IA did not object to the substitute proposed consent order. On March 22, 1989, the presiding ALJ issued an ID granting the joint motion to terminate the investigation with respect to respondent Marco on the basis of the consent order. The Commission has received no petitions for review of the ID nor any comments from other government agencies or the public.

Under both the Commission's current and proposed rules concerning advisory opinions, 19 CFR 211.54(b) and proposed 19 CFR 211.59(a) (53 Fed. Reg. 40453, 40458 (Oct. 17, 1988)), respectively, the Commission has discretion to determine whether it will issue an advisory opinion following a request by an appropriate party. Nonreview of the subject IDs should not be construed as a waiver of the Commission's discretion concerning the issuance of advisory opinions.

Termination of the investigation as to respondents Marco and Progress on the basis of the consent orders furthers the public interest by conserving Commission resources and those of the parties involved.

These actions are taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's interim Rules of Practice and Procedure.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 28, 1989.

[FR Doc. 89-10640 Filed 5-3-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-238 (Final)]

12-Volt Motorcycle Batteries from Taiwan; Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-238 (Final) under Section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (formerly provided for in item 683.01 of the Tariff Schedules of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before June 22, 1989, and the Commission will make its final injury determination by August 16, 1989 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR 207, as amended, 53 FR 33041 *et seq.* (August 29, 1988) and 54 FR 5220 *et seq.* (February 2, 1989)), and part 201, subparts A through E (19 CFR part 201), as amended, 54 FR 13672 *et seq.* (April 5, 1989).

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT:

Woodley Timberlake (202-252-1188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—This investigation is being

instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of 12-volt motorcycle batteries from Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on January 11, 1985, by General Battery Corp. (GBC), Reading, PA. The petition was later amended to include as co-petitioner Yuasa-General Battery Corporation, which together with GBC comprised the bulk of the U.S. industry producing 12-volt motorcycle batteries. (The petitioner is now Yuasa-Exide Battery Corporation, a successor entity to the original petitioners.) In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of the investigation, determined that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of the subject merchandise.

On May 22, 1987, the Court of International Trade affirmed the Commission's preliminary determination of no reasonable indication of material injury to the domestic industry by reason of subject imports, but remanded for reconsideration the Commission's determination with respect to the issue of whether there is a reasonable indication of threat of material injury to the domestic industry by reason of the subject imports. On July 6, 1987, the Commission determined, having reconsidered the record in its entirety, that there was no reasonable indication of threat of material injury to the domestic industry by reason of the subject imports, and provided its views to the Court of International Trade. On July 12, 1988, the Court of International Trade reversed the Commission's determination and ordered the Commission to issue an affirmative preliminary determination with respect to the question of reasonable indication of threat of material injury to the 12-volt motorcycle battery industry in the United States by reason of imports of such merchandise from Taiwan.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date

will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with sections 201.16(c) and 207.3 of the rules, as amended (19 CFR 201.16(c) and 207.3, as amended), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on June 16, 1989, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 6, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 29, 1989. All persons desiring to appear at the hearing and make oral presentations

should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 30, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 29, 1989.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see section 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submission. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 14, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 14, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.9). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such

information no later than July 20, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason.

Secretary.

Issued: April 26, 1989.

[FR Doc. 89-10641 Filed 5-3-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 480]

Chicago and North Western Transportation Co.; Transportation Ramifications of Acquisition by Japonica Partners

Decided: May 1, 1989.

The Commission will hold a public hearing on May 9, 1989, at 10:00 a.m., in Hearing Room A of its Washington, DC, Office to gather information and review the nature and ramifications of the possible takeover of the Chicago and North Western Transportation Company ("CNW") by Japonica Partners ("Japonica"), as such may relate to our responsibilities and the public interest under the Rail National Transportation Policy, 49 U.S.C. 10101a ("RNTP"), and the requirements of the Interstate Commerce Act, 49 U.S.C. 10101, *et seq.* ("ICA"). This hearing will inquire into our concerns regarding such matters as the nature of the transaction, the financial situation of the carrier after consummation, future plans for continuance of present rail services (or their termination or other disposition), and effects of the plans or actions contemplated on the public interest as expressed in the RNTP and the ICA.

By letter of April 27, 1989, the Chairman and Ranking Minority Member of the Surface Transportation Subcommittee of the United States Senate Committee on Commerce, Science and Transportation, and two other Senators, requested that we review and report back to them our findings on all aspects of the transportation ramifications of this proposed transaction, including specifically (1) the transportation ramifications of a sale of an entire railroad and the sale of pieces of a

railroad to repay investor debt taken on in an acquisition of a railroad; (2) the impact on the to-be-acquired railroad if the Powder River Basin line is sold, leased, or leveraged; (3) the impact on competition and Powder River Basin coal rates if the Powder River Basin line is sold, leased, or leveraged; and (4) the identify of the investors in Japonica, and any affiliations they may have with carriers regulated by this Commission under the Interstate Commerce Act. The request is with a view toward our recommending legislation if we consider such to be necessary, or the assertion of our jurisdiction over the transaction.

Pursuant to 49 U.S.C. 10321 (our general authority to obtain and report on information from any person regarding transactions involving carriers subject to our regulation) and 49 U.S.C. 10311 (our authority to make recommendations at any time for additional legislation related to regulation of transportation we believe to be necessary), representatives of the CNW and Japonica are requested to appear, to present testimony before, and submit documentation to the Commission regarding all of the above indicated matters of concern. Other interested parties are invited to present their views on these matters. We are directing that this order be served on appropriate public Federal and State officials, employee representatives, shipper groups, and other affected citizens. Persons submitting statements and documentation should submit 15 (fifteen) copies to the Commission.

To the extent possible, parties shall advise the Commission's Secretary, Noreta R. McGee (202-275-7428), by 4:00 p.m. on May 8, 1989, of their intent to participate. We will do our best to accommodate all persons wishing to participate in this hearing.

Persons wishing further information on this proceeding should contact: Patricia A. Hahn, Associate General Counsel, (202) 275-7312.

By the Commission, Chairman Gradison, Vice-Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89-10833 Filed 5-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 478]

Railroad Cost of Capital, 1988

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On May 3, 1989, the Commission served a decision to update its estimate of the railroad industry's cost of capital for 1988. The composite cost of capital rate for 1988 is found to be 11.7 percent, based on a current cost of debt of 9.7 percent, a cost of preferred equity capital of 7.1 percent, a cost of common equity capital of 12.7 percent, and a 31.0 percent debt/0.6 percent preferred equity/68.4 percent common equity capital structure mix. The cost of capital finding made in this proceeding will enable the Commission to make its annual determination of railroad revenue adequacy for 1988.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision should be utilized to evaluate the adequacy of railroad revenues for 1988 under the standards and procedures promulgated in *Standards for Railroad Revenue Adequacy*, 3 I.C.C. 2d 261 (1986). This finding may also be utilized in proceedings involving the prescription of maximum reasonable rate levels.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: April 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89-10683 Filed 5-3-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on April 19, 1989, a proposed consent decree in *United States v. En-Pro Contractors, Inc.*, Civil Action No. J-C-89-68, was lodged with the United States District Court for the Eastern District of Arkansas. The complaint filed by the United States alleged violations by the defendant of the Clean Air Act and the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos. The complaint sought injunctive relief and civil penalties for

past violations. The proposed consent decree requires En-Pro Contractors, Inc. to comply with the Clean Air Act and the asbestos NESHAP in the future and imposes a \$19,190 civil penalty for past violations of the Act and the Standard.

For the period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. En-Pro Contractors, Inc.*, Department of Justice reference number 90-5-2-1-1276.

The proposed consent decree may be examined at the Office of the United States Attorney, 327 Post Office and Courthouse Building, 600 West Capitol, Little Rock, Arkansas 72203 and at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. The proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1748, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530, or may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy, please refer to *United States v. En-Pro Contractors, Inc.*, Department of Justice 90-5-2-1-1276.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-10694 Filed 5-3-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—X/Open, Ltd.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), X/Open, Ltd. ("X/Open") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on April 4, 1989, disclosing additions to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 19, 1988, X/Open filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the *Federal Register* pursuant to section 6(b) of the Act on November 16, 1988 (53 FR 46128).

The identities of the new members of X/Open are set forth below:

Apollo Computer Inc., 330 Billerica Road, Chelmsford, MA 01824; NEC Corporation, Daito Tamachi Building 14-22 Shibaura 4-Chome Minato-ku, Tokyo 108 Japan; Hitachi Limited, Hitachi Omori 2nd Building 27-18, Minami Oi 6-Chome Shinagawa, Tokyo 140 Japan; and Prime Computer Inc., Prim Parkway, Natick, MA 01760.

No other changes have been made in either the membership or planned activity of X/Open.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-10695 Filed 5-3-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 Semiconductor Research Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC") on March 29, 1989, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the addition of Microelectronics and Computer Technology Corporation and the deletion of the Semi Chapter, the members of which are the following:

AG Associates
American Technical Ceramics
ASYST Technologies, Inc.
Coors Ceramics Company
Emergent Technologies Corporation
FSI Corporation
Hercules Specialty Chemicals Company
Ion Implant Services
Lehigh Electronics, Inc.
Logical Solutions Technology, Inc.
MacDermid, Inc.
Micron Corporation
Optical Specialties, Inc.
Genus, Inc.
Pacific Western Systems, Inc.
Peak Systems, Inc.
Sage Enterprises, Inc.
The SEMI Group, Inc.
SILVACO Data Systems
SOHIO Engineered Materials Company
Solid State Equipment Corporation
Technology Modeling Associates, Inc.
Thermco Systems, Inc.
VLSI Standards, Inc.

The SRC filed its notification of these membership changes for the purposes of

extending the Act's provisions limiting recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties of the SRC and the SRC's general area of planned activity are given below.

The SRC is a joint venture which, with the addition and deletion of the previously identified companies, comprises the following members:

Advanced Micro Devices, Incorporated
Applied Materials, Inc.
AT&T Technology, Incorporated
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
E-Systems, Incorporated
General Electric Company/RCA
General Motors Corporation
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation
Intel Corporation
LSI Logic Corporation
Microelectronics and Computer Technology Corporation
Micron Technology, Inc.
Motorola, Incorporated
National Semiconductor Corporation
NCR Corporation
Perkin-Elmer Corporation
Rockwell International Corporation
SEMATECH, Inc.
Silicon Systems, Incorporated
Texas Instruments, Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation

The SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;
2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;
3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;
4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;
5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-term objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members; and

10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community as a whole.

On January 8, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the *Federal Register* pursuant to section 6(b) of the Act on January 30, 1985 (50 FR 4281). SRC filed additional notifications on June 6, 1985, November 4, 1985, February 19, 1986, and September 11, 1987, notice of which the Department published on June 28, 1985 (50 FR 26850), December 24, 1985 (50 FR 52568), March 18, 1986 (51 FR 9287), and October 9, 1987 (52 FR 37849), respectively. SRC also filed additional notifications on December 19, 1986 and January 30, 1987; the Department published notice of both on February 13, 1987 (52 FR 4671). SRC also filed an additional notification on December 13, 1988, notice of which the Department published on January 13, 1989 (54 FR 1454). SRC also filed additional notifications on January 31, 1989 and February 10, 1989; the Department published notice of both on March 13, 1989 (54 FR 10456).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89-10696 Filed 5-3-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 Software Productivity Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Software Productivity Consortium ("SPC") on March 23, 1989, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of SPC by the withdrawal of Allied Corporation and the admission of Hughes Aircraft

Company and Rockwell International Corporation. The additional notification was filed for the purpose of maintaining the protections of the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to SPC and its general areas of activity are given below.

SPC, with the withdrawal of Allied Corporation and the admission of Hughes Aircraft Company and Rockwell International Corporation, consists of the following firms: The Boeing Company; Ford Aerospace Corporation; General Dynamics Corporation; Grumman Corporation; Harris Corporation; Hughes Aircraft Company; Lockheed Missiles & Space Company, Inc.; Martin Marietta Corporation; McDonnell Douglas Corporation; Northrop Corporation; Rockwell International Corporation; TRW Inc.; United Technologies Corporation; and Vitro Corporation. The nature and objectives of the venture remain as described in the original notification to the Attorney General and the Federal Trade Commission.

On December 21, 1984, SPC filed its original notification pursuant to section 6(a) of the Act, notice of which was published by the Department of Justice ("the Department") pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). SPC filed additional notifications on April 23, 1985, September 24, 1985, December 10, 1985, and February 13, 1986, notice of which the Department published on May 21, 1985 (50 FR 20954), October 22, 1985 (50 FR 42786), January 13, 1986 (51 FR 1450), and March 11, 1986 (51 FR 8373), respectively. SPC also filed additional notifications on December 19, 1988 and December 27, 1988, notice of which the Department published on January 31, 1989 (54 FR 4922).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-10697 Filed 5-3-89; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

Program Announcement: Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP)

pursuant to section 248(a)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, Subtitle F of Title VII of Pub. L. 100-690, November 18, 1988, announces a new research initiative to evaluate conditions in juvenile detention and correctional facilities, to determine the extent to which such facilities meet recognized national standards, and to make recommendations to improve the conditions in these facilities.

The purpose of this initiative is to review systematically the conditions of confinement in juvenile detention and correctional facilities in the United States and to determine the extent to which those conditions comply with existing recognized national standards. A major product of this project will be a summary of the results for OJJDP to use in preparing a report to the Congress of the United States on the conditions existing within juvenile detention and correctional facilities, including recommendations for the improvement of those conditions. This summary must be completed and submitted to OJJDP by September 1, 1991.

This is a research effort composed of three incremental stages:

Stage 1—Research Design: The research design should clearly articulate the problem, objectives, methodology, measures, sampling strategy and analysis plans for reviewing the conditions of confinement within juvenile detention and correctional facilities.

Stage 2—Data Collection and Data Processing: This stage involves the implementation of the design developed in Stage 1. The following tasks are to be completed: (1) Preparation of the data collection plan; (2) pilot tests of the data collection instrument(s); (3) data collection; (4) data processing; and (5) preparation of data tapes for analysis.

Stage 3—Data Analysis and Preparation of Reports: A series of reports on the existing conditions of confinement in juvenile detention and correctional facilities will be prepared. These reports will include a description and a summary of the results of the study as well as recommendations for improving conditions of confinement for juveniles.

OJJDP invites public and private agencies and organizations, or combinations thereof, to submit competitive applications to conduct the research outlined in this solicitation.

Up to \$800,000 has been allocated for the initial award. One cooperative agreement will be awarded

competitively, with an initial budget period of 18 months. This research program will consist of three stages (Design, Implementation, and Analysis). The initial award will provide support for stages I and II. One or more noncompeting continuation awards will be considered to complete a 30 month project period. Applicants should include in their proposal a plan to complete the analysis of the data collected for this project as well as an estimate and justification of the amount required to complete the analysis.

The deadline for receipt of applications is six (6) weeks after publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Douglas W. Thomas, Research and Program Development Division, (202) 724-5929, OJJDP, Room 784, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

- I. Introduction and Background
- II. Program Goals and Objectives
- III. Program Strategy
- IV. Dollar Amount and Duration
- V. Eligibility Requirements
- VI. Application Requirements
- VII. Procedures and Criteria for Selection
- VIII. Deadline for Receipt of Applications
- IX. Civil Rights Compliance

I. Introduction and Background

In 1986, there were approximately 716,608 admissions of juveniles to public and private residential programs housing delinquent or status offenders. These residential programs provide for the care and custody of youths placed by courts with juvenile court jurisdiction for delinquent offenses, non-criminal misbehavior, or neglect and abuse. They include detention centers, shelter care facilities, training schools, camps and ranches, group homes and community-based correctional centers. On any given day one may find many thousands of youths housed within these residential settings. Indeed, a 1987 census of Children in Custody revealed that 91,646 juveniles were in custody on a single day in the approximately 3,300 public and private juvenile residential facilities serving juvenile courts throughout the United States. (Office of Juvenile Justice and Delinquency Prevention, *Children in Custody: 1987 Census of Public and Private Juvenile Facilities*. Publication Forthcoming.)

Inadequate conditions of confinement within juvenile detention and correctional facilities present major obstacles to the provision of individualized justice and effective services to meet the needs of youth in custody. At best, inadequate conditions

can be counter-productive to the growth and development of juveniles in custody. At worst, they can be destructive and dehumanizing.

The JJDP Act provides for the development of comprehensive strategies to deal with the problems of juvenile delinquency and other issues pertaining to the administration of juvenile justice in the United States. A major purpose of the JJDP Act is "to develop and encourage the implementation of national standards for the administration of juvenile justice, including recommendations for administrative, budgetary, and legislative action at the Federal, State, and local level to facilitate the adoption of such standards." (Sec. 102(a)(5))

The 1988 amendment to the JJDP Act directly addresses the issue of conditions of confinement for juveniles by requiring that the Office of Juvenile Justice and Delinquency Prevention conduct a study to review the conditions in juvenile detention and correctional facilities and assess the extent to which those conditions meet recognized national professional standards. The review of conditions in juvenile detention and correctional facilities is to result in a series of reports on the conditions existing within juvenile custodial facilities (see Stage III). This material will be used by OJJDP in preparing a report to the Congress of the United States summarizing the results of the study, and in making recommendations for improving the conditions in those facilities.

The study outlined herein is a response to this recent amendment to the JJDP Act as well as a continuation of previous efforts by the Office of Juvenile Justice and Delinquency Prevention to encourage the adoption and utilization of national juvenile justice standards. For this study, existing nationally recognized standards addressing the conditions of confinement for juveniles in custody are to be used as a basis for the review of conditions within juvenile detention and correctional facilities. The ultimate goal is to improve the operation of those facilities and the delivery of appropriate services to juveniles.

In addressing the extent to which conditions in juvenile detention and correctional facilities meet recognized national standards, the full range of available standards should be assessed to select those that should be applied to this study. The legal literature, as it relates to the rights of institutionalized persons, should also be reviewed to determine the extent to which conditions of confinement have been addressed in the courts.

Standards provide a focal point for the assessment and improvement of the process of justice for juveniles by guiding policy and informing administrative actions. Standards related to the conditions of confinement in juvenile detention and correctional facilities can provide specific and measurable objectives, help define tasks to assist the accomplishment of goals, and provide guidance in developing policies and procedures to improve service delivery.

Previous efforts to establish national standards for the administration of juvenile justice have been carried out by various national professional organizations and prominent national advisory committees. Included among these efforts are the following:

- (1) The Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards (IJA/ABA).
- (2) The National Advisory Committee on Criminal Justice Standards and Goals Task Force on Juvenile Justice and Delinquency Prevention (Task Force).
- (3) National Advisory Committee for Juvenile Justice and Delinquency Prevention: Standards on the Administration of Juvenile Justice (NAC).
- (4) American Correctional Association/Commission on Accreditation (ACA/CAC).

The standards prepared by the IJA/ABA, the Task Force, and the NAC are comprehensive and cover a wide range of issues including intervention in the lives of children, delinquency prevention, court roles and procedures, the police, planning and evaluation, as well as other areas. The standards promulgated by the ACA focus upon corrections and include community residential services, probation and aftercare, detention facilities and services, and training schools.

One of the major activities of this program is to select and operationally define the "conditions" that will be assessed. Applicants are to address a wide range of conditions of confinement, including but not limited to:

- Intake and release criteria;
- Judicial case review;
- Mail, telephone use, and visitation;
- Access to religious services;
- Access to legal assistance;
- Dress and personal property;
- Educational, training and treatment programs;
- Exercise and recreation;
- Medical services;
- Mental health care;
- Isolation;
- Diet and Nutrition;

- Staff qualifications and numbers;
- Sanitation, safety, and hygiene;
- Physical environment and living conditions;
- Resident rights, sanctions, and grievance procedures;
- Monitoring and reporting behaviour of residents.

Standards promulgated by Federal agencies, professional organizations and national advisory committees do not, necessarily, obligate states, local jurisdictions, or private agencies to comply with those standards. It is expected, however, that the policies, procedures, and practices established at the state and local level for juvenile detention and correctional facilities will reflect, to varying degrees, recognized national standards. This study, therefore, will involve the identification of local detention and State correctional policies, procedures, practices and programs and the determination of the extent to which they are consistent with nationally recognized standards.

II. Program Goals and Objectives

A. Goals

1. To review recognized national professional standards for juvenile detention and correctional facilities.
2. To assess conditions in juvenile detention and correctional facilities and determine the extent to which those conditions meet recognized national standards.
3. To make recommendations for improving the conditions of confinement in juvenile detention and correctional facilities through the identification of model policies, procedures, practices and programs that are consistent with recognized national standards.

B. Objectives

1. Develop a research strategy to conduct an assessment of conditions of confinement in juvenile detention and correctional facilities.
2. Collect data on the conditions within juvenile detention and correctional facilities.
3. Analyze the data on the conditions of confinement within juvenile detention and correctional facilities, report on the analysis and develop specific recommendations for improving the conditions of confinement.

III. Program Strategy

OJJDP's planning and program development activities are guided by a framework that specifies four (4) sequential phases of program development: Research, development, demonstration, and dissemination. This framework guides the decision-making

process regarding the funding of future stages of the program.

This program is a research initiative. The purpose of the research initiative is to conduct and support research on issues that relate to the administration of juvenile justice and to the prevention of delinquency in the United States. The program will be conducted in three discrete incremental stages: (I) The research design stage, which involves the development of a research methodology for the assessment of conditions of confinement in juvenile detention and correctional facilities; (II) The Data collection stage, in which data will be collected, processed and prepared for analysis using the methodology developed in the previous stage; and (III) The data analysis and reporting stage, which involves the analysis of the data and the preparation of reports that summarize the results of the study and provide recommendations for improving conditions of confinement in juvenile detention and correctional facilities.

All technical and subject matter portions of the program will be guided by recommendations of a project advisory committee established specifically for the program. The project advisory committee will provide comments and recommendations regarding the strategies and activities for this program. It may be necessary to change or supplement project advisory committee members for different stages of the program. However, the objective will be to select technical and subject matter experts capable of addressing issues related to each of the program stages.

The project advisory committee members should have combined expertise in juvenile corrections, criminal/juvenile justice research and evaluation, and standards pertaining to the administration of juvenile justice, particularly as they relate to juvenile corrections.

Each state of the program development process detailed below is designed to result in a complete and publishable product (e.g.: A research design that includes a review of existing recognized national standards, the research strategy, and reports to be prepared), and a dissemination strategy to inform the field of the development of the program and the results and products of each stage. A decision to continue or to terminate the program is made at the end of each state based on the availability of funds and the quality and utility of program products.

A. Stage I—Research Design

The first stage of the program consists of developing the research design. The research should be designed to produce recommendations that can guide the development of programs to improve the conditions within detention and correctional facilities. This will involve the identification and review of national standards for detention and correctional facilities and the development of clear, well justified definitions of "conditions" and "detention and correctional facilities." The research design should also provide for the selection of an appropriate sampling strategy for each type of facility, a plan for data collection, and a plan for the dissemination of information.

1. Activities

Applicants must describe how the following major activities will be undertaken:

- a. Establishment of a project advisory committee;
- b. Development of a research design plan;
- c. Review of the literature;
- d. Development of the research design;
- e. Project advisory committee review; and
- f. Development of a dissemination strategy to inform the field of the status of the project.

2. Products

The products to be completed during this stage are:

- a. A plan for developing the research design that includes:
 - (1) Research objectives;
 - (2) Description of activities, including an integrated time/task plan; and
 - (3) Staff assignments.
- b. A research design that specifies:
 - (1) Objectives;
 - (2) Definition of key concepts—including, but not limited to: "Conditions," "secure detention and correctional facilities," and "recognized national standards";
 - (3) Operationalization and measurement of key concepts;
 - (4) Sampling strategy for secure detention and correctional facilities;
 - (5) Data collection plan;
 - (6) Data analysis plans;
 - (7) Anticipated reports;
 - (8) Time/task plan for implementation; and
 - (9) Dissemination strategy to inform the field of the status of the program.

B. Stage II—Data Collection and Data Processing

This stage involves the collection of data on the conditions of confinement using the methodology and instruments developed in the previous stage. The data collection instruments should be pilot tested and the project advisory committee should review the results of the pilot tests. It is expected that a preliminary report on the results of the pilot tests, including comments from the project advisory committee, will be prepared and appropriate revisions to the instrument will be made.

This stage also includes the preparation of the data for analysis. Data processing involves the preparation and application of appropriate data coding strategies and entry of the data into an automated data processing system. The applicant should address how each of the activities in Stage II will be accomplished.

1. Activities

Applicants must describe how the following major activities will be undertaken:

- a. Preparation of a data collection plan;
- b. Pilot test of the data collection instrument(s);
- c. Project advisory committee review of the results of the pilot test and appropriate adjustments to methodology and/or instrument(s);
- d. Data collection;
- e. Data processing; and
- f. Preparation of data file for analysis.

2. Products

The major products to be completed during this stage are:

- a. Data collection plan to include a detailed data collection protocol;
- b. Report on results from pilot test of data collection instruments and final instruments;
- c. Data tape prepared for analysis, to include all necessary documentation; and
- d. Dissemination strategy to inform the field of the status of the program.

C. Stage III—Data Analysis and Reporting

The final stage of this initiative will involve the analysis of the data collected and the preparation of reports. Applicants should include a proposed set of reports that will communicate the results to a variety of audiences including policy makers, practitioners, and researchers in the juvenile justice system. These reports are to describe the study, summarize the results, and provide recommendations as they relate

to improving conditions of confinement existing in juvenile detention and correctional facilities.

1. Activities

Applicants must describe how the following major activities will be undertaken:

- a. Preparation of a plan for report development and dissemination;
- b. Analysis of data;
- c. Preparation of draft reports on analyses related to the research objectives;
- d. Project advisory committee review of analysis and draft reports; and
- e. Preparation of reports on existing conditions in juvenile detention and correctional facilities and the extent to which they meet existing recognized national standards, which include recommendations for policy and program development.

2. Products

The products to be completed under this stage are:

- A. Plan for data analysis and preparation of reports that identifies the report or series of reports to be prepared and the purpose and audience for each report;
- b. Draft reports;
- c. Final reports; and
- d. Dissemination strategy to inform the field of the results of the program.

IV. Dollar Amount and Duration

Up to \$800,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, with an initial budget period of eighteen (18) months. This research program will consist of three stages (Design; Data Collection; and Analysis and Reporting). The initial award will provide support for stages I and II. One or more noncompeting continuation awards will be considered to complete the thirty month project period.

Noncompetitive continuation awards for the additional budget periods may be withheld for justifiable reasons. They include: (1) The results of stage I and II do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason that would

indicate continued funding would not be in the best interest of the Government.

V. Eligibility Requirements

Applications are invited from public and private agencies and organizations. In order to expand the pool of eligible candidates, applications will be accepted from for-profit agencies as long as they agree to waive their profit fee and accept only allowable costs.

Applicant organizations may choose the submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Applicants and co-applicants must demonstrate that they have prior experience in the design and implementation of large scale, multiple site research on the juvenile justice system; and demonstrated knowledge of issues associated with juvenile corrections and conditions of confinement within juvenile detention and correctional facilities.

The applicants must also demonstrate that they have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (Section VI) in Part IV, Program Narrative of the application (SF-424). The program narrative of the application should not exceed 70 double-spaced pages in length.

In accordance with Executive Order 12549, 28 CFR 67.510, applicants must also provide a certification that they have not been debarred (voluntarily or involuntarily) from the receipt of Federal funds. Form 4662/2, which will be supplied with the application information package, must be submitted with the application.

In addition, applicants must provide a *Certification Regarding Drug-Free Workplace Requirements* which meets the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). Form 4061/3, which will be supplied with the application information package, must be submitted with the application.

In submitting applications that contain more than one organization, the

relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of \$10,000.

The following information must be included in the application:

A. A Statement of the Problem to be Addressed—Applicants must include the review of the literature and a discussion of the potential contribution of this research to the field.

B. Program Goals and Objectives—A succinct statement of the applicants' understanding of the goals and objectives of the program must be included, and specification of key research questions to be addressed.

C. Research Design and Strategy—Applicants must describe the proposed approach for achieving the goals and objectives of the research program. Applicants must include a detailed discussion of how each of the activities in the three stages of the program will be accomplished, including a detailed discussion of the process for product preparation.

D. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

E. Program Implementation Plan—Applicants must prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they

meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the program application requirements, organizational capability, goals, objectives and program strategy described in the RFP, and thoroughness and innovation in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985, at 50 FR 31366-31367. The selection criteria and their point values (weights) are as follows:

(A) The problem to be addressed by the project is clearly stated. This criterion includes—clear, concise, well justified statement of the problem. (5 Points)

(B) The objectives of the proposed project are clearly defined. This criterion includes—succinct statement of the goals and objectives of the project; operational definitions of "nationally recognized standards," "juvenile detention and correctional facilities," and "conditions of confinement." (10 Points)

(C) The project design is sound and contains program elements directly linked to the achievement of project objectives. This criterion includes—appropriateness and technical adequacy of the approach to the activities and products of each stage of the program for meeting the goals and objectives; and potential utility of proposed products. (15 Points)

(D) The project management structure is adequate to the successful conduct of the project. (35 Points): This criterion includes—(1) adequacy and appropriateness of the activities and the project management structure, and the feasibility of the time-task plan (15 Points); (2) the qualifications of staff identified to manage and implement the program including staff to be hired through contracts, the clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (20 Points)

(E) Organizational capability is demonstrated at a level sufficient to successfully support the project. This criterion includes—the extent and quality of organizational experience in the development, delivery and coordination of research programs that have been national in scope. (20 Points)

(F) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed to be undertaken. This criterion includes—completeness,

reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished. (15 Points)

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Deadline for Receipt of Applications

Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications will be provided upon request.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on the date six (6) weeks after the date of publication in the *Federal Register*. Those applications sent by mail should be addressed to: NIJJDP/OJJDP, United States Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP, Room 784, 633 Indiana Avenue, NW, Washington, DC, between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance, including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts, C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color,

religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person shall be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary financial assistance to any other recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Diane M. Munson

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

Date: April 26, 1989.

[FR Doc. 89-10717 Filed 5-3-89; 8:45 am]

BILLING CODE 4410-19-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites

public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before June 19, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefing describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army, N1-AU-89-6. Records relating to base reduction and closure. (Records of office with

Army approval authority are permanent).

2. Defense Nuclear Agency, (N1-374-89-13 through -17). Routine security files.

3. Defense Nuclear Agency, (N1-374-89-18). Routine communications services records.

4. Defense Nuclear Agency, (N1-374-89-19). Routine materiel standardization program files. Final standardization documents will be retained as permanent records.

5. Defense Nuclear Agency, (N1-374-89-20). Routine housekeeping files related to defense materials requirements, manufacturing, and material engineering.

6. Defense Nuclear Agency, (N1-374-89-21). Routine supply control and quantitative materiel requirements records.

7. Defense Nuclear Agency, (N1-374-89-22). Routine information management files.

8. Department of Commerce, International Trade Administration (N1-151-89-1). Miscellaneous audiovisual records of the Office of World Fairs and International Expositions other than those appraised as permanent.

9. Department of Energy, Oil Import Appeals Board (N1-434-89-4). Case files relating to administration of the oil import program, 1959-75.

10. Department of Energy, Oil Import Administration (N1-434-89-5). Case files and other records relating to administration of the oil import program, 1957-71.

11. United States Information Agency, Bureau of Educational and Cultural Affairs, Office of Academic Programs (N1-306-89-8). Routine facilitative records. Policy documentation is scheduled for permanent retention.

12. Department of Justice, Federal Bureau of Investigation (N1-65-89-2). Documentation containing personal information whose destruction has been requested under the Privacy Act of 1974 by the subject of the files.

13. Tennessee Valley Authority, Resource Development, River Basin Operations (N1-142-89-10). Water leak detection program data base and water log data base.

Dated: April 27, 1989.

Don W. Wilson,

Archivist of the United States.

FR Doc. 89-10642 Filed 5-3-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Meeting of the Advisory Committee for Atmospheric Sciences

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Date: May 22-24, 1989.

Time: 9:00 a.m.-5:00 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Part Open:

Closed: May 22—9:00 a.m. to 5:00 p.m.

Open: May 22—9:00 a.m. to 5:00 p.m.,

May 24—9:00 a.m. to 5:00 p.m.

Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9874.

Minutes: May be obtained from the Contact Person listed above.

Purpose: Oversight reviews of the Aeronomy and Global Atmospheric Research Programs, including examination of proposal jackets, reviewer comments, and other privileged materials, and the review of the Centers and Facilities Section staff's oversight of the National Center for Atmospheric Research and other facilities.

Agenda:

Closed: Oversight review of Aeronomy and Global Atmospheric Research Programs, May 22, 1989.

Open: May 23—Oversight of the Centers and Facilities Section, May 24—10:30 a.m., Room 540, Remarks by the Assistant Director for Geosciences, Report on ACAS Chairs Meetings with NSF Director, Presentation of Oversight Reports.

Reason for Closing: This portion of the meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

May 1, 1989.

[FR Doc. 89-10710 Filed 5-3-89; 8:45 am]

BILLING CODE 7555-01-M

Electrical, Communications, and Systems Engineering; Advisory Committee Meeting

National Science Foundation announces the following meeting:

Name: Advisory Committee for Electrical, Communications, and Systems Engineering.

Date: May 30 and 31, 1989.

Time: May 30—12:00 Noon to 6:00 p.m., May 31—8:30 a.m. to 4:00 p.m.

Place: National Science Foundation, Conference Room 543, Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. Frank L. Huband, Acting Division Director, Division of Electrical and Communications Systems, Room 1151, National Science Foundation, Washington, DC, Telephone: 202-357-9618.

Purpose of Committee: To discuss research trends and opportunities and to advise on priorities in resource management.

Agenda: Presentations by individual ECS Program Directors, Management of resources, Issues and priorities, Trends and opportunities in electrical engineering research, Relation to other NSF activities and new initiatives.

M. Rebecca Winkler,
Committee Management Officer.

May 1, 1989.

FR Doc. 89-10711 Filed 5-3-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Information, Robotics and Intelligent Systems; Amended Meeting

The meeting notice published on April 27 is being amended to add a closed session. The notice is being resubmitted for publication.

Name: Advisory Committee for Information, Robotics, and Intelligent Systems.

Date and Time: May 18, 1989, 9:00 am to 5:00 pm, May 19, 1989, 8:30 am to 3:30 pm.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Part Open.

Closed: May 18—10:00 am to 5:00 pm.

Open: May 18—9:00 am to 10:00 am,

May 19—8:30 am to 3:30 pm.

Contact Person: Dr. Y.T. Chien, Director, Division of Information, Robotics, and Intelligent Systems, Room 310, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357-9572 or E-Mail ytchien@note.nsf.gov. Anyone planning to attend this meeting should notify Dr. Chien no later than May 15, 1989.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To conduct oversight reviews of the Information, Robotics, and Intelligent Systems' Programs, including examination of proposal jackets, reviewer comments, and other privileged materials; and to provide advice and recommendations concerning support of research in Information, Robotics, and Intelligent Systems.

Agenda: May 18, 1989.

Open: 9:00 am—10:00 am—Opening Remarks by NSF Staff.

Closed: 10:00 am—5:00 pm—Oversight Review of IRIS Programs.

May 19, 1989.

Open: 8:30 am—3:30 pm—Discussions Focusing on Specific Program Aspects; Future Strategy for Programs and Divisional Initiatives. Committee Business Discussion.

Reason for Closing: The closed portion of the meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.

May 1, 1989.

FR Doc. 89-10712 Filed 5-3-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS).

Date and Time: May 23, 1989—9:00 a.m. to 5:30 p.m. & May 24, 1989— a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550; Rooms 1242 & 1243.

Type of Meeting: Open.

Contact Person: Dr. Donald F. Heinrichs, Director, Division of Ocean Sciences, Room 609, National Science Foundation Washington, DC—Telephone: 202/357-9639.

Summary Minutes: May be obtained from the contact person.

Purpose of Committee: To provide advice and recommendations

concerning ocean research and its support by the NSF Division of Ocean Sciences.

Agenda: The Committee will hold a two day meeting. Following opening remarks and general introductions, the Committee will hear presentations and status reports of current and topical interest from various officials and representatives from NSF, ACOS, and other organizations active in ocean sciences matters. The committee will hear progress reports from subcommittees on program oversight and human resources planning. The committee will discuss Long-Range Planning for Ocean Sciences, the impact of NSF budgets on this planning and take appropriate action concerning implementation procedures. The committee will also conduct necessary administrative functions in accordance with established custom and practice with respect to: approval of the minutes of the previous meeting; determination of time and place of the next meeting; as well as any other appropriate business.

M. Rebecca Winkler,
Committee Management Officer.

May 1, 1989.

[FR Doc. 89-10713 Filed 5-3-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Diablo Canyon Nuclear Power Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-80 and DPR-82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the Technical Specifications (TS) by revising the surveillance test frequency of the turbine stop valves, the governor valves and the intercept valves associated with the turbine overspeed protection. Specifically, the proposed amendments would revise TS 3/4.3.4, "Turbine Overspeed Protection," to (1) change the frequency of stroke testing of the main turbine valves from weekly to quarterly and (2) change the frequency

of the direct observation of valve movement from every 31 days to quarterly. The amendments would also delete a footnote to TS 3/4.3.4 that is no longer applicable.

The proposed action is in accordance with the licensee's application for amendments dated January 22, 1988.

The Need for the Proposed Action

The proposed revision to the TS is required to: (1) Reduce the number of thermal and pressure cycles on the plant; (2) reduce the amount of liquid and solid radioactive waste that results in a reduction in personnel exposure; and (3) reduce the potential for inadvertent reactor scrams.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. Since the evaluation demonstrates that the operating parameters are not affected, the proposed revision does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents and the change would reduce the amount of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed revision to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on May 18, 1988 (53 FR 17806). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This

would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Diablo Canyon Nuclear Power Plant dated May 1973, and its Addendum, dated May 1976.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated January 22, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 22nd day of April, 1989.

For the Nuclear Regulatory Commission,
George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89-10702 Filed 5-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Diablo Canyon Nuclear Power Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-80 and DPR-82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the combined Technical

Specifications (TS) to permit the use of Vantage 5 fuel in the facility.

The proposed action is in accordance with the licensee's application for amendments dated November 29, 1988, as supplemented by submittals filed on December 9, 1988 and February 17, 1989 (Reference LAR 88-08).

The Need for the Proposed Action

The proposed amendments are needed so that the licensee can use the improved fuel design for longer fuel cycles, which may involve the use of higher enrichment fuel and extended fuel irradiation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit the fuel to be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT), but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no effect on the probability of any accident. The increased burnup may slightly change the mix or fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the NRC staff's assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. This assessment was published in the August 11, 1988 *Federal Register* (53 FR 30355) as part of the Carolina Power & Light Co., et al., Shearon Harris Nuclear

Power Plant, Unit 1, Environmental Impact Assessment and Finding of No Significant Impact for the utilization of higher enriched fuel and extended fuel irradiation and is hereby referenced for this Environmental Impact Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contributions of the proposed increase in the fuel enrichment and irradiation limits will either cause no change in, or may, in fact, reduce the environmental cost contributions summarized in Table S-4, as set forth in 10 CFR 51.52(c). Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives would have equal or greater environmental impacts.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Diablo Canyon Nuclear Power Plant dated May 1973, and its Addendum, dated May 1976.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated November 29, 1988, and the supplemental submittals dated December 9, 1988 and February 17, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 25th day of April 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 89-10703 Filed 5-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Issuance Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59, issued to the Power Authority of the State of New York (PASNY or the licensee) for operation of the FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of a change to the operating license to extend the expiration date of the operating license from May 20, 2010 to October 17, 2014 for the FitzPatrick Nuclear Power Plant, and is in response to the licensee's application dated August 19, 1987. These dates represent 40 years from the dates of the Construction Permit and the Operating License, respectively. The Commission's staff has prepared an Environment Assessment of the proposed action, "Environment Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in the Expiration Date of Facility Operating License DPR-59, Power Authority of the State of New York, Oswego County, New York, FitzPatrick Nuclear Power Plant, Docket Number 50-333, dated April 27, 1989."

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for the FitzPatrick Nuclear Power Plant. This evaluation considered the previous environmental studies, including the "Final Environmental Statement for the FitzPatrick Nuclear Plant" dated March 1973, and more recent NRC policy related to evaluations of license extensions for similar nuclear power plants.

Radiological Impacts

The staff concludes that the Exclusion Area, the Low Population Zone and the nearest population center distances will likely be unchanged from those described in the March 1973 Final Environmental Statement (FES). The population living within 10 miles of the plant in 1988 is only slightly higher than the number of people which the 1970 census estimated would be living within the 10-mile zone. This slow, small increase in the number of people living within the 10-mile zone and the continuing rural nature of the area indicate that the number of people living around the plant should pose no problem to the proposed extension of the operating license.

The additional period of plant operation would not significantly affect the probability or consequences of any reactor accident. Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding as-low-as-reasonably-achievable (ALARA) limits, and are indicative of future release. The proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the occupational exposures for the FitzPatrick Nuclear Power Plant personnel have been only slightly above the national average for boiling water reactors. The license is striving for significant dose reductions in accordance with ALARA principles and the staff expects that further reductions will be achieved using advanced technologies and equipment that are and will likely become available.

Accordingly, annual radiological impacts on man, both offsite and onsite, are not more severe than previously estimated in the FES, and our previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste to and from the FitzPatrick Nuclear Plant, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR Part 51.52. The values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with plant operation.

Non-Radiological Impacts

The Commission has concluded that the proposed extension will not cause a significant increase in the impacts to the environment and will not change any

conclusions reached by the Commission in the FES.

Finding of no Significant Impact

The Commission has reviewed the proposed change to the expiration date of the James A. FitzPatrick Nuclear Plant facility operating license relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff has concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated August 19, 1987, (2) the Final Environmental Statement for the James A. FitzPatrick Nuclear Plant, issued March 1973, and (3) the Environmental Assessment dated April 27, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Dated at Rockville, Maryland, this 27th day of April 1989.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects I/II.

[FR Doc. 89-10705 Filed 5-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-9 and Facility Operating License No. NPF-17, issued to Duke Power Company, (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would relocate fire protection requirements from the operating licenses and Technical Specifications (TS) to the

Final Safety Analysis Report (FSAR) in accordance with NRC Generic Letters (GL) 86-10 and 88-12. Specifically, the requested changes would revise Unit 1 License Condition 2.C.(4) and corresponding Unit 2 License Condition 2.C.(7) "Fire Protection Program" to delete obsolete requirements to complete certain modifications which have been completed, and substitute a standard condition that states:

b. The licensee may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

The proposed amendments would delete TS 3/4.3.3.7, referenced TS Table 3.3-11 corresponding Bases, each titled "Fire Detection Instrumentation;" TS 3/4.7.10 "Fire Suppression Systems" including all subsections, referenced TS Table 3.7-5 "Fire Hose Stations," and associated Bases; TS 3/4.7.11 "Fire Barrier Penetrations" and its corresponding Bases; and TS 6.2.2.e which addresses staffing requirements for the site Fire Brigade. Additionally, reference to the "Fire Brigade" composition within the footnote referenced by TS 6.2.2.e would be removed. The TS Index would be revised to reflect these deletions.

The proposed amendments would supplement the administrative controls requirements of TS 6.5.1 "Review and Audit-Technical Review and Control Activities" to require that the Station Manager ensure the performance of a review by a qualified individual/organization of the Fire Protection Program and implementing procedures and submittal of recommended changes to the Nuclear Safety Review Board. The amendments would also supplement TS 6.8.1 "Procedures and Programs" to add the following to the existing activities requiring written procedures: "h. Fire Protection Program implementation" and "i. Commitments contained in FSAR Chapter 16.0."

The licensee's application for the amendments was dated March 9, 1987, and revised March 20, 1989.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed

amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revision to the license condition is in accordance with the guidance provided in GL 86-10 and GL 88-12 for licensees requesting removal of fire protection TS. The incorporation of the existing Fire Protection Program, and the former TS requirements by reference to the procedures implementing these requirements, into the FSAR and the use of the standard license condition on fire protection will ensure that the Fire Protection Program, including the systems, the administrative and technical controls the organization, and the other plant features associated with fire protection will be on a consistent status with other plant features described in the FSAR. Also, the provisions of 10 CFR 50-59 would then apply directly for changes the licensee desires to make in the Fire Protection Program. In this context, the determination of the involvement of an unreviewed safety question defined in 10 CFR 50.59(a)(2) would be made based on the "accident * * * previously evaluated" being the postulated fire in the fire hazards analysis for the fire area affected by the change. Hence, the proposed license condition establishes an adequate basis for defining the scope of changes to the Fire Protection Program which can be made without prior Commission approval, i.e., without introduction of an unreviewed safety question. The revised license condition or the removal of the existing TS requirements of fire protection does not create the possibility of a new or different kind of accident from those previously evaluated. They also don't involve a significant reduction in the margin of safety since the license condition does not alter the requirement that an evaluation be performed for the identification of an unreviewed safety question for each proposed change to the Fire Protection Program.

Consequently, neither the proposed license condition nor the removal of the fire protection requirements involves a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification of the Administrative Control Section 6 of the TS includes the addition of Fire Protection Program implementation to the requirements for Specification 6.8. Procedures and Programs, that requires

written procedures be established, implemented, and maintained covering this program. This section of the TS is also modified to include the review of the Fire Protection Program and implementing procedures by a qualified individual or organization and the submittal of recommended changes to the Nuclear Safety Review Board as one of the responsibilities of the Station Manager under TS 6.5.1. In this manner, the Fire Protection Program will be addressed by administrative control requirements that are consistent with other programs addressed by license conditions. These changes, and the change to the license conditions to delete obsolete (completed) requirements, are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendments include the removal of fire protection TS in four areas: (1) Fire detection systems, (2) fire suppression systems, (3) fire barriers, and (4) fire brigade staffing requirements. While it is recognized that a comprehensive Fire Protection Program is essential to plant safety, many details of this program that are currently addressed in TS can be modified without affecting nuclear safety. With the removal of these requirements from the TS, they have been incorporated into the Fire Protection Program implementing procedures. Hence, with the additions to the existing administrative control requirements that applicable to the Fire Protection Program and the revised license condition, there are suitable administrative controls to ensure that license initiated changes to these requirements, that have been removed from the TS, will receive careful review by competent individuals. Again, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the preceding assessment, the staff proposes to find that the amendments involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications

Branch, Division of Freedom of Information and Publication Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Buildings, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By June 5, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first rehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received.

Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 28th day of April 1989.

For the Nuclear Regulatory Commission,
Darl S. Hood,

*Project Manager, Project Directorate II-3,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 89-10701 Filed 5-3-89; 8:45am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-9 and Facility Operating License No. NPF-17, issued to Duke Power Company, (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would make editorial, administrative or other minor changes to add clarification, consistency and conciseness to the following plant Technical Specifications (TS) and TS Tables: Page 3/4 1-9, TS 4.1.2.3.1, Reactivity Control Systems, Charging Pump Shutdown; page 3/4 1-10, TS 4.1.2.4.1, Reactivity Control Systems, Charging Pump Operating; page 3/4 3-21, Table 3.3-3, ESF Actuation System Instrumentation, Item 7.d Auxiliary Feedwater Suction Pressure; page 3/4 3-22, Table 3.3-3, Item 7.g. Trip of Feedwater Pumps; page 3/4 3-22, Table 3.3-3, Item 7.f Auxiliary Feedwater-Blackout; page 3/4 3-23, Table 3.3-3, Note 1 for Item 7.f.; page 3/4 3-23, Table 3.3-3, Item 9, Loss of Power, Note 15a; page 3/4 3-28, Table 3.3-4 ESF Actuation System Instrumentation Trip Setpoints, Item 7.f Auxiliary Feedwater-Blackout, Note 1; page 3/4 3-29, Table 3.3-4, Note 1; page 3/4 3-32, Table 3.3-5, ESF Response Times, Item 13b Station Blackout, Note 6; page 3/4 3-33, Table 3.3-5, Note 6; page 3/4 3-53, Table 3.3-9 Remote Shutdown Monitoring Instrumentation, Item 7 Auxiliary Feedwater Pump Motor Control Panel; page 3/4 3-56, Table 3.3-10 Accident Monitoring Instrumentation, Item 2 Reactor Coolant Temperature; page 3/4 3-69, Table 4.3-8 Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirements, Items 3a and 3b, Sampling of Ventilation Condensate and Conventional Wastewater, Note 4; page 3/4 3-72, Table 3.3-13, Radioactive Gaseous Effluent Monitoring Instrumentation, Item 3, Noble Gas Monitor, Notation #; page 3/4 3-74, Table 3.3-13, Note #, Applicability; page 3/4 3-75, Table 4.3-9, Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements, Item 3, Noble Gas Monitor, Notation #; page 3/4 3-77, Table 4.3-9, Note #, modes applicable; page 3/4 5-6, TS 4.5.2, Emergency Core Cooling Systems Surveillance

Requirements, TS 4.5.2b(1) Water in ECCS piping; page 3/4 5-7, TS 4.5f Pump pressure check; page 3/4 6-22, TS 3.6.3 Containment Isolation Valves, Action, page 3/4 6-22, TS 4.6.3.1 Surveillance Requirements; page 3/4 11-15, TS 4.11.2.4.2 Gaseous Radwaste Treatment System Surveillance Requirements; page 3/4 3-22, Table 3.3-3, Item 9, Loss of Power, 4KV bus; page 3/4 3-24, Table 3.3-3, Action 17a; page 3/4 3-24a, Table 3.3-3, Action 27.

The licensee also proposed a change to license NPF-17 for McGuire Nuclear Station, Unit 2, to delete license condition 2.C.(8) regarding the control of heavy loads. The NRC's Generic Letter 85-11, "Completion of Phase II of 'Control of Heavy Loads at Nuclear Power Plants,' NUREG-0612," dated June 28, 1985 is the basis for the change which is purely administrative.

The licensee's application for the amendments was dated February 17, 1987, as supplemented November 19, 1987, and April 1 and October 3, 1988.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided discussion and analysis of the proposed amendments with regard to the three standards of 10 CFR 50.92. The staff has reviewed the proposed changes and finds most to be of an editorial or administrative nature to clarify the TS and more closely reflect the as-built condition of the plants. The remaining changes are of a minor nature, do not change the existing limiting conditions for operation or the surveillance requirements, and thus would not adversely affect the safe operation of the plants. Therefore, the proposed changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administrative and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By June 5, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure

to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 28th day of April 1989.

For the Nuclear Regulatory Commission.
Darl S. Hood,

*Project Manager, Project Directorate II-3,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 89-10700 Filed 5-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

**Portland General Electric Co.;
Consideration of Issuance of
Amendment to Facility Operating
License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No NPF-1 issued to Portland General Electric Company (the licensee) for operation of the Trojan Nuclear Plant, located in Columbia County, Oregon. The request for amendment was submitted by letter dated February 10, 1989.

The proposed amendment would revise Trojan Technical Specification (TTS) 5.7.2.2.a to allow modifications to the Control-Auxiliary-Fuel Building Complex (the Complex) which result in up to a net 3 percent increase in lateral shear forces on any story.

Trojan Technical Specification 5.7.2 provides restrictions on the design provisions of the Complex. One of these restrictions, as stated in TTS 5.7.2.2.a, is that no modifications which will result in a net 1 percent increase in lateral shear forces on any story of the Complex shall be performed without prior approval by the Nuclear Regulatory Commission.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 5, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a

notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. A person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner

promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Leonard A. Girard, Esq., Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Portland State University Library, 731 SW. Harrison Street, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 17th of April 1989.

For the Nuclear Regulatory Commission.
Roby Bevan,

*Project Manager, Project Directorate V,
Division of Reactor Projects III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 89-10704 Filed 5-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

**Southern California Edison Co. et al.;
Issuance of Amendment to Provisional
Operating License**

The U.S. Nuclear Regulatory Commission (Commission) has issued

Amendment No. 125 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The amendment was effective as of the date of issuance.

The amendment approves changes to the auxiliary feedwater system to eliminate a single failure vulnerability and provide for automatic starting of the third auxiliary feedwater pump.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on January 12, 1989 (54 FR 1260). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to this action and has concluded that an environmental impact statement need not be prepared because operation of the facility in accordance with this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 8, 1988, as supplemental February 17 and April 5, 1989, (2) Amendment No. 125 to License No. DPR-13, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 25th day of April, 1989.

For the Nuclear Regulatory Commission,
Charles M. Trammell,
*Senior Project Manager, Project Directorate
V, Division of Reactor Projects—III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.*
[FR Doc. 89-10706 Filed 5-3-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

**Southern California Edison Co. et al;
Consideration of Issuance of
Amendments to Facility Operating
Licenses and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated May 25, 1988, as revised by letter dated April 4, 1989, and identified as proposed change PCN-221.

Technical Specification 3/4.6.1.7, "Containment Ventilation System," permits each 8-inch containment purge supply and exhaust isolation valve to be open for less than or equal to 1000 hours (3000 hours for Unit 3 prior to the third refueling outage) per 365 days, and requires each 42-inch containment purge supply and exhaust isolation valve to be sealed closed, in operational modes 1,2,3 and 4. The proposed change would revise Specification 3.6.1.7 to allow blind flanging the 8-inch or 42-inch containment purge supply and exhaust isolation valves as an acceptable method to close and/or seal closed the valves. In addition, the proposed change would revise the current allowable period that the 8-inch containment purge supply and exhaust isolation valves may be open, to permit unrestricted valve operation as required for specific safety related purposes. These purposes would be defined as containment pressure control, ALARA and respirable air quality for personnel entry, and surveillance tests. The proposed change would also revise Action Statement "a" of Specification 3.6.1.7 to increase the allowable time to close or blind flange and open valve from 1 hour to 4 hours. Finally, the proposed change would exempt blind flanges on the containment purge supply and exhaust lines from the 31 day inspection requirement and would include these blind flanges in the

quarterly leakage rate test of the purge supply and exhaust isolation valves.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 5, 1989, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to

intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-(800)325-6000 (in Missouri 1-(800)342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in the 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 20th day of April 1989.

For The Nuclear Regulatory Commission,
George W. Knighton,
Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-10707 Filed 5-3-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

**Southern California Edison Co. et al.;
Withdrawal of Application for
Amendments to Facility Operating
Licenses**

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Southern California Edison Company (SCE) to withdraw the March 7, 1984 application for amendments to Facility Operation License No. NPF-10 and Facility Operating License No. NPF-15, issued for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The licensees are Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Riverside, California. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on November 20, 1985 (50 FR 47871).

The purpose of the licensees' amendment request was to revise the Technical Specifications (TS) to reflect changes in the SCE organizational structure, to incorporate new NRC reporting requirements, and to make minor clarifications to certain other requirements.

Subsequently SCE informed the staff that the amendments are no longer requested. Thus, the amendments for application is considered to be withdrawn by the licensees.

For further details with respect to this action, see (1) the application for amendment dated March 7, 1984, as supplemented September 4, 1984, April 12, 1985, August 2 and 15, 1985 and May 3, 1988, and (2) the staff's letters dated April 12, 1989 and April 25, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 25th day of April, 1989.

For the Nuclear Regulatory Commission,
Donald E. Hickman,
Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-10708 Filed 5-3-89; 8:45 am]
BILLING CODE 7590-01-M

**OFFICE OF PERSONNEL
MANAGEMENT**

**Federal Prevailing Rate Advisory
Committee; Open Committee Meeting**

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, May 17, 1989, Wednesday, May 24, 1989, Wednesday, June 14, 1989.

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and

formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632-9710.

April 26, 1989.

Thomas E. Anfinson,
Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 89-10672 Filed 5-3-89; 8:45 am]
BILLING CODE 6325-01-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Accelerated Elimination of Duties for Certain Products Covered by the United States-Israel Free Trade Area Agreement

AGENCY: Office of the U.S. Trade Representative.

ACTION: Request for public comment regarding possible accelerated elimination of duties for certain products covered by the United States-Israel Free Trade Area (FTA) Agreement.

SUMMARY: The United States-Israel Free Trade Area Agreement and section 5(c) of the United States-Israel Free Trade Area Agreement Implementation Act of 1985 establish procedures for the possible accelerated phase out of those

duties to be otherwise maintained at the most-favored-nation rate of duty until January 1, 1995. This notice requests written public comments with regard to the possible accelerated elimination of duties on certain products. The deadline for receiving such comments is May 26, 1989.

SUPPLEMENTARY INFORMATION: Requests for additional information should be directed to Joseph S. Papovich, Director of Middle Eastern Affairs, Office of Europe and the Mediterranean, Office of the United States Trade Representative, Room 317, 600 17th Street NW., Washington, DC 20506; telephone (202) 395-3211.

1. Background

The FTA, which entered into effect in April, 1985, provides that all products of Israel imported into the United States and all products of the United States imported into Israel that conform to the conditions specified in the Agreement shall be free of duty by January 1, 1995. U.S. and Israeli duties on a large number of articles were removed immediately upon implementation of the Agreement on September 1, 1985. For virtually all remaining articles, staged removal of the duty began on September 1, 1985. For a short list of articles, however, set out in lists C to Annexes 1 and 2 of the Agreement, the FTA specified that the most-favored-nation duty rate would continue to apply until January 1, 1990, and that the rates to be applied from that date until January 1, 1995 would be agreed upon in negotiations between the Governments of Israel and the United States. Effective January 1, 1995, these articles will be free of duty. Any reduction of these duty rates in the United States prior to January 1, 1995, requires Congressional approval.

In preparation for consultations with the Government of Israel on the U.S. and Israeli duty rates to be applied to these articles beginning on January 1, 1990, the Office of the U.S. Trade Representative has requested advice from the U.S. International Trade Commission. In addition, this Office will be requesting advice from appropriate advisory committees established under section 135 of the Trade Act of 1974, and through publication of this notice is seeking written comments from the public.

2. Information To Be Included in Comments

Each comment should include the following information:

A. General Information

(1) Name and business address of individual or organization submitting the

comment, individual in the organization to be contacted concerning the comment, telephone number and date of comment.

B. Product Information

(2) Product on which comments are being provided and whether the comments pertain to a tariff of the United States or Israel, or both.

(3) Tariff sub-heading numbers at the eight-digit level in the United States or Israeli Harmonized System ("HS") tariff schedules in which the product is classified and the product description of the subheadings.

(4) Whether the comments pertain to all products covered by a tariff subheading listed in paragraph 3, or only the product identified in paragraph 2 above.

(5) Reasons for advising for or against accelerated tariff elimination.

C. Statistical Information

Provide data, if available, on:

(6) Your firms' exports to and/or imports from Israel, in dollars, for each product in the most recent three year period for which data are available.

(7) Projected exports to and/or imports of the product if tariff elimination is accelerated.

Note: Business confidential material should be so marked so that special handling may be provided.

3. Instructions for Submitting Requests

Requests should be type-written and submitted in 10 copies to: Joseph S. Papovich, at the address indicated above. Requests must be received by May 26, 1989 to ensure consideration under the above procedures.

Sandra J. Kristoff,
Chairwoman, Trade Policy Staff Committee.
[FR Doc. 89-10726 Filed 5-3-89; 8:45 am]
BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Revisions to the Model Conservation Standards for New Commercial Buildings and Utility Programs; Public Hearings

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of hearings and deadline for comment.

SUMMARY: At its April 12, 1989 meeting the Council voted to distribute for public comment a draft revision of the Model Conservation Standards (MCS) for new commercial buildings. Approximately one year ago, the Council received public comment on proposed revisions, but decided to delay entering rulemaking until new national standards for commercial buildings were completed. The Secretary of the U.S. Department of Energy recently authorized final standards for new federally owned commercial buildings, and the Council believes that the process for updating its standards for new commercial buildings can now proceed.

SUPPLEMENTARY INFORMATION: As directed by the Northwest Power Act (16 U.S.C. 839 *et seq.*, the Act), the Council developed a regional conservation and electric power plan shortly after its formation. The Plan includes an energy conservation program, including, but not limited to, Model Conservation Standards for new commercial buildings.

In implementing the Power Plan, the Council has developed the practice of continually reviewing and updating, in orderly fashion, elements of the Plan. The frequency with which an element is updated often depends on the availability of new information or changed circumstances. While some proposed amendments are taken up on the Council's own initiative, others are the result of informal suggestions or recommendations from outside parties. In addition, the Council has adopted specific procedures that allow any person to petition for an amendment to the Plan at any time. In this case, the Council granted a petition of the Northwest Conservation Act Coalition (NCAC) and the Natural Resources Defense Council (NRDC) that had argued that potentially economically feasible and regionally cost-effective savings remained beyond the Council's existing MCS. The Council, based on its own analysis, on public comment and on information obtained from consultants with interested parties, has prepared proposed revisions to the MCS for new commercial buildings.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments will close on July 14, 1989. Public hearings on the proposed amendments will be held in each of the four Northwest states as follows:

May 9, 1989, approximately 3 p.m. as part of the monthly Council meeting at the Elkhorn Resort in Ketchum, Idaho.

June 12, 1989, 1:30-4:00 p.m., Port of Seattle chambers, 2201 Alaskan Way, Pier 66, Seattle, Washington.

June 20, 1989, 1:00 p.m. at the Council's Central Office, 851 S.W. Avenue, Suite 1100, Portland, Oregon.

July 12 or 13, 1989, during the Council's meeting at the Grouse Mountain Lodge, Whitefish, Montana. The exact time will be published with the Council's agenda.

Guidelines for Presenting Oral Comments at Hearings

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office no later than the day before the hearing. The Council's address is: 851 S.W. 6th Avenue, Suite 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222-5161 and (toll free) (800) 222-3355 in Idaho, Montana, and Washington or (800) 452-2324 in Oregon.

2. Those who do not reserve time periods will be permitted to present oral comments as time permits.

3. Each speaker will be allowed 15 minutes during the hearing.

Guidelines for Submitting Written Comments

1. All written comments must be received in the Council's central office, at 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204, by 5 p.m. Pacific time on January 13, 1989.

2. Please provide three (3) copies of all written submissions.

3. Please clearly mark your comments "COMMERCIAL MCS".

FOR FURTHER INFORMATION CONTACT:

If you would like a copy of the proposed amendments, please contact Judi Hertz, in the Council's office of Public Information and Involvement, at the address or telephone numbers listed above.

Edward Sheets,

Executive Director.

[FR Doc. 89-10673 Filed 5-3-89; 8:45 am]

BILLING CODE 0000-00-M

Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* Repayment of Debt (BRC)
- (2) *Form(s) submitted:* T-421f
- (3) *OMB Number:* New Collection
- (4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
- (5) *Type of request:* New Collection
- (6) *Frequency of response:* On occasion
- (7) *Respondents:* Individuals or households
- (8) *Estimated annual number of respondents:* 60
- (9) *Total annual responses:* 60
- (10) *Average time per response:* .083 minutes
- (11) *Total annual reporting hours:* 5
- (12) *Collection description:* Section 2 of the Railroad Retirement Act provides for payment of annuities to retired or disabled railroad employees, their spouses and eligible survivors. When the RRB determines that an overpayment of RRA benefits has occurred, it initiates prompt action to notify the claimant of the overpayment and to recover the amount owed the RRB.

Additional Information or Comments:

Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[FR Doc. 89-10747 Filed 5-3-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24876]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 27, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the

complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 22, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Massachusetts Electric Company
(70-7648)**

Massachusetts Electric Company ("Mass. Electric"), 25 Research Drive, Westborough, Massachusetts 01582, a wholly-owned electric subsidiary of New England Electric System, a registered holding company, has filed an application pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Mass. Electric proposes to issue and sell through March 31, 1991, up to an aggregate principal amount of \$100 million of medium term notes ("Notes"). The Notes, which shall be offered publicly on a periodic basis, will have maturities ranging from nine months to thirty years, with redemption or noncallable protection for a period not to exceed seven years. Interest rates will not be in excess of those generally obtained, on the date of issue, for sales of medium term notes of similar terms and conditions (including security) having the same maturity, by companies or comparable credit quality. Mass. Electric proposes to issue first mortgage bonds under its existing first mortgage bond indenture directly as Notes. The Notes will be issued under one or more additional supplements to Mass. Electric's First Mortgage Indenture and Deed of Trust dated as of July 1, 1949, as amended and supplemented (the "Bond Indenture"), and will be secured, along with all other bonds issued under the Bond Indenture, by a first mortgage.

The net proceeds from the sale of the Notes will be applied to the cost of, or the reimbursement of the treasury for, or the payment of short term borrowings incurred for, capitalized additions and improvements to the plant and property of Mass. Electric.

Mass. Electric requests authorization to begin negotiations, pursuant to an exemption from the competitive bidding requirements of Rule 50(a)(5), with investors, or to engage placement agents to negotiate with purchasers, in connection with the issuance and sale of the Notes. It may do so.

Because of the nature of a Note program (small issues with varying maturities), Mass. Electric states that sinking funds would not generally be appropriate. The terms of the proposed Notes would not be in accordance with the *Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Act of 1935* respecting sinking fund and dividend provisions, (HCAR No. 13105, February 16, 1956), and redemption (HCAR No. 16369, May 8, 1969) (collectively the "Policy"). Mass. Electric requests authority to deviate from the Policy.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-10614 Filed 5-3-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2348]

Texas (and Contiguous Counties in the States of Arkansas and Louisiana); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 23, 1989, I find that Cass, Cherokee, Gregg, Harrison, Marion, and Rusk Counties, in the State of Texas, constitute a disaster loan area due to damage from severe thunderstorms and flooding which occurred on March 28-29, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on June 23, 1989, and for economic injury until the close of business on January 24, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grant Prairie, Texas 75051, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Anderson, Angelina, Bowie, Camp, Henderson, Houston, Morris,

Nacogdoches, Panola, Shelby, Smith, and Upshur, in the State of Texas; Miller County, Arkansas; and Caddo County, Louisiana, may be filed until the specified date at this location.

The interest rates are:

| | Percent |
|---|---------|
| Homeowners with Credit Available Elsewhere..... | 8.000 |
| Homeowners without Credit Available Elsewhere | 4.000 |
| Businesses with Credit Available Elsewhere..... | 8.000 |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere..... | 4.000 |
| Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere..... | 9.125 |

The number assigned to this disaster for physical damage is 234806 and for economic injury the numbers are 675200 for the State of Texas; 675300 for the State of Arkansas; and 675400 for the State of Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: April 26, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-10677 Filed 5-3-89; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of San Antonio will hold a public meeting at 9:00 a.m., Thursday, May 25, 1989, at the North Star Executive Center, 7400 Blanco Road, Suite 200, San Antonio, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, North Star Executive Center, 7400 Blanco Road, Suite 200 San Antonio, Texas 78216-4300, phone (512) 229-4501.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 27, 1989.

[FR Doc. 89-10676 Filed 5-3-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1106]

Fishermen's Protective Act; Procedures; Fees**ACTION:** Notice of refund of fees paid in fiscal year 1986.**SUMMARY:** Certain vessels covered by the Fishermen's Guaranty Fund in fiscal year 1986 will receive a refund of \$9.00 per gross vessel ton.**EFFECTIVE DATE:** May 1, 1989.**FOR FURTHER INFORMATION CONTACT:** Mr. H. Stetson Tinkham, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520, Telephone Number (202) 647-2009.

SUPPLEMENTARY INFORMATION: On March 14, 1986, the Department of Commerce filed a notice of a \$14 per gross vessel ton increase in the fees under section 7 of the Fishermen's Protective Act (22 U.S.C. 1971 *et seq.* for fiscal year October 1, 1985 to September 30, 1986 (51 Fed. R. 8840, March 14, 1986). That fee increase was challenged by several boat owners in the case of *Brenda Jolene et al. v. United States of America et al.* (Civil No. 86-0961-E). On March 23, 1987, Federal District Court Judge William B. Enright ruled that the notice of increased fees was void, and directed the Secretary to promulgate regulations consistent with section 7 of the FPA. In the meantime, 29 vessel owners paid the increased fees. Two vessel payments were invalid and one payment was subsequently refunded, leaving 26 participants in the fiscal year 1986 Fund. The court decision did not direct the Secretary to refund any portion of the fees paid by these participants. The Department has determined that the best course of action is to settle any potential claims arising as a result of the court decision in the amount of \$9.00 per gross vessel ton. Thus, those vessel owners who were covered by the Fishermen's Guaranty Fund under section 7 of the Fishermen's Protective Act during fiscal year 1986 and paid the full fee amount of \$30.00 per gross vessel ton are eligible to receive a refund of \$9.00 per gross vessel ton. To receive the refund, eligible vessel owners must sign a full release of all claims which they might have against the U.S. Government for fees paid in fiscal years 1986 and 1987. In those instances where vessel owner payments may have been in error, or where owners paid only part of the increase, the refund is based on actual payment

received by the Department of Commerce.

Classification

This action is taken under the authority of 22 U.S.C. 1977, complies with the Executive Order 12291, and is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information requirement, as defined in the Paperwork Reduction Act.

As a "matter relating to Agency * * * contracts," this notice is exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedure Act. This means analysis under the Regulatory Flexibility Act is not required.

For the Secretary of State.

Date: April 18, 1989.

Frederick Bernthal,

Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 89-10692 Filed 5-3-89; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration**FAA Approval of Noise Compatibility Program, Nantucket Memorial Airport, Nantucket, MA****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Town of Nantucket, Massachusetts, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96-52 (1980). On August 19, 1988, the FAA determined that the noise exposure maps, submitted by the Town of Nantucket, Massachusetts, under Part 150, were in compliance with applicable requirements. On February 9, 1989, the Associate Administrator approved the Nantucket Memorial Airport (ACK) noise compatibility program. Out of the 6 proposed program elements, 5 were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the ACK noise compatibility program is February 9, 1989.

FOR FURTHER INFORMATION CONTACT: John Silva, Federal Aviation

Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273-7060.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the ACK noise compatibility program, effective February 9, 1989.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable

Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Town of Nantucket submitted to the FAA, on February 4, 1988, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April 1986 through February 1988. The ACK noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 19, 1988. Notice of this determination was published in the *Federal Register* on September 6, 1988.

The ACK study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 19, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days, (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180 day period shall be deemed to be an approval of such a program.

The submitted program contained six proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part

150 have been satisfied. The overall program, therefore, was approved by the Administrator effective February 9, 1989.

Approval was granted for five specific program elements. Airport Operations Measure 5, concerning the purchase of approximately 75 acres of land, was disapproved, on the basis that it is not shown to be noncompatible on either the existing or future noise exposure maps.

The approved program for Nantucket includes noise abatement flight procedures, preferential runway use, monitoring the noise control program, establishment of a permanent Advisory Committee, and the initiation of real property noise notices.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on February 9, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Airport Manager, Nantucket Memorial Airport, Nantucket, Massachusetts.

Issued in Burlington, Massachusetts on April 12, 1989.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 89-10667 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice Spokane International Airport, Spokane, Washington

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Spokane International Airport (GEG) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the Spokane International Airport noise exposure maps is April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM-611, 17900 Pacific Hwy S., C-68966, Seattle, WA 98168.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Spokane International Airport are in compliance with applicable

requirements of Part 150, effective April 18, 1989.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Spokane Airport Board. The specific maps under consideration are Exhibits 5-8 and 5-14 in the submission. The FAA has determined that these maps for Spokane International Airport are in compliance with applicable requirements. This determination is effective on April 18, 1989. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act.

These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,
Independence Avenue, SW., Room
615, Washington, DC

Federal Aviation Administration,
Airports Division, ANM-600, 17900
Pacific Hwy S., C-68966, Seattle,
Washington 98168

Spokane International Airport, Spokane,
Washington.

Questions may be directed to the individual named above under the heading, "FOR FURTHER INFORMATION CONTACT".

Issued in Seattle, Washington, April 18, 1989.

James R. Houghton,

Assistant Manager, Airports Division.

[FR Doc. 89-10668 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-19]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve

the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before May 24, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 27, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25795

Petitioner: Air Atlantic Airlines

Regulations Affected: 14 CFR 135.213 and 135.225

Description of Relief Sought: To allow petitioner to fly certain aircraft that are under lease-back operations addressed in § 91.54 using its own pilots.

Docket No.: 25799

Petitioner: Zambia Airways Corporation Ltd.

Sections of the FAR Affected: 14 CFR 43.3, 43.5, and 43.7

Description of Relief Sought: To allow petitioner to operate its DC-10-30 aircraft with certain engines, components, appliances, and spare parts that have been repaired, overhauled, or inspected by persons outside of the United States who do not hold U.S. airman certificates, but who may possess appropriate authorization from the aeronautical authority of another ICAO member state.

Docket No.: 25816

Petitioner: American Flyers

Sections of the FAR Affected: 14 CFR 6317

Description of Relief Sought: To allow petitioner to administer and grade the flight engineer written test following completion of its flight engineer ground school.

Docket No.: 25827

Petitioner: Ameriflight, Inc.

Sections of the FAR Affected: 14 CFR 135.225

Description of Relief Sought: To allow petitioner relief from the requirement for an approved weather report, subject to certain self-imposed restrictions.

Docket No.: 25810

Petitioner: Express One International, Inc.

Sections of the FAR Affected: 14 CFR 121.337

Description of Relief Sought: To allow petitioner to use the combination of oxygen mask and smoke goggles approved to FAA Technical Standard Order C99 presently used on petitioner's cargo aircraft in meeting the intent of § 121.337 on protective breathing equipment.

Docket No.: 25860

Petitioner: Horizon Air

Sections of the FAR Affected: 14 CFR 121.337 and 121.417(c)(1)

Description of Relief Sought: To allow petitioner a 6-month extension, until January 6, 1990, to comply with the requirements for protective breathing equipment and training in the use of that equipment.

Docket No.: 25866

Petitioner: Evergreen International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.337

Description of Relief Sought: To allow the combination of oxygen masks and smoke goggles approved to FAA Technical Standard Order C99 and presently in use on petitioner's all-cargo aircraft in meeting the requirements of § 121.337.

Docket No.: 23477

Petitioner: Experimental Aircraft Association

Regulations Affected: 14 CFR 103.1(a), (e)(1), and (e)(4)

Description of Relief Sought/Disposition: To extend Exemption No. 3784, as amended, that allows individuals authorized by the petitioner to operate powered ultralights at an empty weight of not more than 330 pounds, that have a power-off stall speed of not more than 29 knots calibrated airspeed, and with another occupant for the purpose of

flight instruction. *GRANT, April 20, 1989, Exemption No. 3784C.*

Docket No.: 25120

Petitioner: Singapore Airlines Limited
Sections of the FAR Affected: 14 CFR 21.197(c)

Description of Relief Sought/

Disposition: To extend Exemption No. 4792 that allows petitioner a special flight permit with a continuing authorization for aircraft that may not meet applicable airworthiness requirements but are capable of safe flight for the purpose of flying such aircraft to a base where maintenance or repairs are to be performed.
GRANT, April 12, 1989, Exemption No. 4792A.

Docket No.: 25579

Petitioner: Erwin Siebzebrubel
Sections of the FAR Affected: 14 CFR 65.91

Description of Relief Sought/

Disposition: To allow petitioner to obtain inspection authorization without fulfilling the 3-year requirement to hold an airframe and powerplant rating. *DENIAL, April 13, 1989, Exemption No. 5040.*

Docket No.: 25704

Petitioner: Chandler-Gilbert Community College

Sections of the FAR Affected: 14 CFR 147.31(c)(1)(iv)

Description of Relief Sought/

Disposition: To allow petitioner to credit certain students enrolled in its math and physics courses and to allow this credit to be used by the students as part of the requirements necessary to apply for a mechanic certificate with airframe or powerplant ratings or both, prior to the subject courses being approved as part of the airframe and powerplant mechanic curriculum. *GRANT, April 19, 1989, Exemption No. 5041.*

[FR Doc. 89-10671 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

National Aviation Safety Priorities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: FAA requests public comment as part of a systematic effort to identify specific National Aviation Safety Priorities. Comments would be appreciated in each of several categories. Interested parties are invited to identify—with supporting rationale and documentation—a limited number of top priority, national aviation safety issues on which the FAA may take effective action separately or in concert

with the aviation community and issues on which the aviation community may take effective action on its own. We request that comments follow the format outlined below.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert Matthews, National Priorities Program Manager, Federal Aviation Administration (AOV-400), Washington, DC 20591, or telephone (202) 267-7344.

Comment Period: Through June 29, 1989.

Background: One of FAA's primary missions is to foster and promote aviation safety. In order to ensure that FAA fulfills this mission properly, the Associate Administrator for Aviation Safety will undertake a systematic effort to identify a primary set of high priority, national issues in several categories of aviation safety. FAA seeks the benefit of direct and broad public participation in this effort. Accordingly, comments are invited from all interested parties on just which aviation safety issues constitute those of highest national priority within each category.

Those categories can be divided into two broad classes of aviation activity: commercial air transportation and general aviation. Issues within these broad classes would affect the following categories: flight operations, maintenance, aircraft certification, air traffic control, airway facilities, airport operations, civil aviation security, rotorcraft, and other.

Issues need not be limited to those on which FAA can take direct or unilateral action. Rather, issues may include those on which FAA and/or other elements of the aviation community can take effective action. However, comments should be limited to aviation safety issues that are of the *highest* national concern. Commenters should include rationale and supporting documentation to establish issues as being of the highest national importance. Commenters also are requested to identify the relative priority of each issue if more than one issue is included in a submission.

After reviewing comments, FAA will publish an interim list of priorities for each category in the **Federal Register** by mid-August. This effort will be followed in September by a listening session at which the public can address the merits of the interim draft priorities. FAA then will develop a final set of recommended national aviation safety priorities, which will be forwarded to the Federal Aviation Administrator in October 1989.

The August entry in the **Federal Register** will invite interested parties to comment on the interim list and/or to

advise FAA if they wish to make oral presentations at the listening session to address a specific item or items that have been included or excluded. To avoid duplication in the presentations, and to ensure that all significant items are addressed, FAA will develop an agenda for the listening session. The agenda will identify scheduled presentations and will allocate specific time slots.

Final staff recommendations on national aviation safety priorities will be submitted to the Federal Aviation Administrator in October. Those recommendations will be based on internal FAA analysis of issues, which will include full consideration of all comments received.

Format for Public Comment

Commenters are encouraged to address as many of the following categories as possible under commercial air transportation and general aviation: flight operations, maintenance, aircraft certification, air traffic control, airway facilities, airport operations, civil aviation security, rotorcraft, and other. For each issue, please include the following.

1. Category, title and brief description. For example:

Category: Commercial Air Transportation Security
Title: Passenger Screening Devices
Description: . . .

2. Rank order of each issue within a category (1st, 2nd, etc.).

3. For each issue, include one to two pages of rationale on why it qualifies as the highest national aviation safety priorities for FAA and/or other elements of the aviation community. Please include any supporting documentation or additional data.

4. What type of action, and by whom (FAA, airport operators, carriers, etc.) is required to address each issue?

5. What type of information should FAA collect and analyze to monitor the issues properly?

Address

Federal Aviation Administration,
Associate Administrator for Aviation Safety, Attn: ASV-400, Washington, DC 20591.

B. Keith Potts,

Associate Administrator for Aviation Safety, Safety Information Division.

[FR Doc. 89-10669 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

Research, Engineering, and Development Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Federal Aviation Administration Research, Engineering, and Development Advisory Committee to be held May 25, 1989, in the first floor conference room of the Ryder Building, 475 School Street SW., Washington, DC commencing at 10 a.m.

The Agenda for this meeting is as follows:

- (1) Establish committee operating procedures,
- (2) Review the Federal Aviation Administration Research and Development program.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. John Turner, Executive Director, Research, Engineering, and Development Advisory Committee, ADM-1, 800 Independence Avenue SW., Washington, DC 20591, telephone 202-267-3555.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on April 28, 1989.

John Turner,

Executive Director Research, Engineering, and Development Advisory Committee.

[FR Doc. 89-10670 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; St. Louis County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Anderson, Federal Highway Administration, Jefferson City, Missouri, 65102, Telephone: (314) 636-7104;

Mr. James F. Roberts, Surveys and Plans Engineer Missouri Highway and Transportation Department, P.O. Box 270 Jefferson City, Missouri 65102, Telephone: (314) 751-2876;

Mr. Richard Daykin, Director St. Louis County Department of Highways and Traffic, 7900 Forsyth, Clayton, Missouri 63105, Telephone: (314) 889-3100.

SUPPLEMENTARY INFORMATION:

1. The project consists of the extension of the Earth City Expressway south from Prichard Farm Road on new location west of existing Creve Coeur Mill Road. The extension will continue southward to a new intersection at Olive Boulevard, at a point west of Fee Fee Road where it intersects Olive Boulevard and east of where Woods Mill Road intersects Olive Boulevard.

The proposed project will consist of a five-lane highway connecting I-70 and Olive Boulevard and will serve to reduce congestion on I-270.

2. Three alternate alignments will be considered on the main portion of the proposed highway. The "no build" alternative will be addressed.

3. A reconnaissance of the area has been made and preliminary information developed. This EIS is being prepared in conjunction with the EIS for the Page Avenue Extension.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on April 28, 1989.

Robert G. Anderson,

District Engineer, Jefferson City, Missouri.

[FR Doc. 89-10748 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket No. M-011]

Intent to Transfer Government Vessel

AGENCY: Maritime Administration.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Maritime Administration (MARAD) intends to transfer the S.S. LANE VICTORY from the National Defense Reserve Fleet (NDRF) in Suisun Bay, California to the U.S. Merchant Marine Veterans of World War II (Veterans) located at North Hollywood, California on or before May 31, 1989.

DATE: Comments concerning the proposed action must be received at the office below on or before May 17, 1989.

ADDRESS: Further information may be obtained from J.C. Fernandez, Vessel Disposal and Foreign Transfer Officer, Maritime Administration (MAR-745.1), 400 Seventh Street, SW., Room 7324,

Washington, DC 20590, Phone (202) 366-5821.

SUPPLEMENTARY INFORMATION: MARAD is delegated authority by the Secretary of Transportation (Secretary) to dispose of government-owned vessels of merchant ship design. The S.S. LANE VICTORY, built at Los Angeles, California, during 1945, is part of MARAD's NDRF in Suisun Bay, California.

Private Law 100-21 (Statute), October 18, 1988, authorized the Secretary to transfer the S.S. LANE VICTORY to a nonprofit corporation to serve as a merchant marine memorial museum. Veterans caused the legislation to be introduced and was identified in the legislative history as the only known association ready and willing to implement the statutory objective.

The Statute also authorized the Secretary to transfer unneeded ship's equipment to the S.S. LANE VICTORY from other NDRF ships. Since its enactment, Veterans actively participated in the selection of such equipment to assure a successful return of the S.S. LANE VICTORY to the public service prescribed by the Congress.

Veterans' general plans appear in "Hearings before the Subcommittee on Merchant Marine of the Committee on Merchant Marine and Fisheries, House of Representatives" (Serial No. 100-32) (May 7, 1987), particularly at pages 139-140.

MARAD is about to begin preparation of the formal agreement whereby the S.S. LANE VICTORY would be transferred to Veterans in accordance with the terms of the Statute and with Veterans' announced plans. Views of interested members of the public are invited. The tentative schedule is to effect transfer of the S.S. LANE VICTORY to Veterans on or before May 31, 1989.

James A. Saari,

Secretary, Maritime Administration.

Date: April 28, 1989.

[FR Doc. 89-10605 Filed 5-3-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 11-89]

Treasury Notes, Series Y-1991

Washington, April 27, 1989.

The Secretary announced on April 20, 1989, that the interest rate on the notes designated Series Y-1991, described in Department Circular—Public Debt Series—No. 11-89 dated April 20, 1989,

will be 9 1/4 percent. Interest on the notes will be payable at the rate of 9 1/4 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-10610 Filed 5-3-89; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the Agency has made such a submission. USIA is required to "Update Information on Exchange Visitor Program Sponsors" in accordance with the Mutual Education & Cultural Exchange Act of 1961 as amended, 22 CFR part 514. USIA is requesting approval for the extension of form IAP-87, "Update of Information on Exchange Visitor Program Sponsor," which was cleared previously by OMB and assigned clearance number 3116-0011. Respondents will be required to respond only one time.

DATE: Comments must be received by May 31, 1989.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Retta H. Graham-Hall, United States Information Agency, M/ASP, 301 4th Street SW., Washington, DC 20547, telephone (202) 485-7501, and OMB review: John Horrigan, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: Information on Exchange Visitor Program Sponsor. The USIA form IAP-87 is used by Exchange Visitor Sponsors when they wish to change the name of their organization or change the names of the personnel involved or their telephone numbers. The form is also used as a quick means to order other forms or code books.

Proposed Frequency of Responses: Number of Respondents—4,000, Recordkeeping Hours—156, Total Annual Burden—1,156.

Dated: April 28, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89-10613 Filed 5-3-89; 8:45 am]

BILLING CODE 8230-01-M

A Grants Program for Private Not-For-Profit Organizations In Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the *Federal Register* June 3, 1987.

Private sector organizations interested in working cooperatively with USIA on

the following concept are encouraged to so indicate:

The U.S. and Eastern Europe: An Educational Dialogue

The Office of Private Sector Programs will assist in supporting a three-week study tour for six Eastern European university rectors. This program will focus on the higher education and post-secondary academic options available to students in the U.S. and the structure of the American higher education system. It will include travel to Washington, DC and at least one state capital.

USIA is most interested in working with organizations that show for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials marked "Eastern European Rectors' Project"—postmarked no later than thirty days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (Attn: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, DC 20547, Attn: M. Feldman.

Dated: April 11, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89-10495 Filed 5-3-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 85

Thursday, May 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, May 17, 1989.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during April, 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available

from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: May 1, 1989.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 89-10897 Filed 5-2-89; 3:56 pm]

BILLING CODE 7550-01-M

Corrections

Federal Register

Vol. 54, No. 85

Thursday, May 4, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0155]

Indirect Food Additives; Polymers

Correction

In rule document 89-9271 appearing on page 15750 in the issue of Wednesday, April 19, 1989, make the following correction:

On page 15750, in the third column, in the fifth line from the bottom, the signature should read "Richard J. Ronk."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Sulfamethazine Boluses

Correction

In rule document 89-9347 appearing on page 15751 in the issue of Wednesday, April 19, 1989, make the following correction:

§ 520.2260a [Corrected]

On page 15751, in the 2nd column, in § 520.2260a(a)(3)(ii)(A), in the 13th line, "(*Streptococcus* supp.)" should read "(*Streptococcus* spp.)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

Correction

In notice document 89-9412 appearing on page 15997 in the issue of Thursday, April 20, 1989, make the following correction:

On page 15997, in the second column, under **FOR FURTHER INFORMATION CONTACT**, in the last line, the telephone number should read "220-2322".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8226]

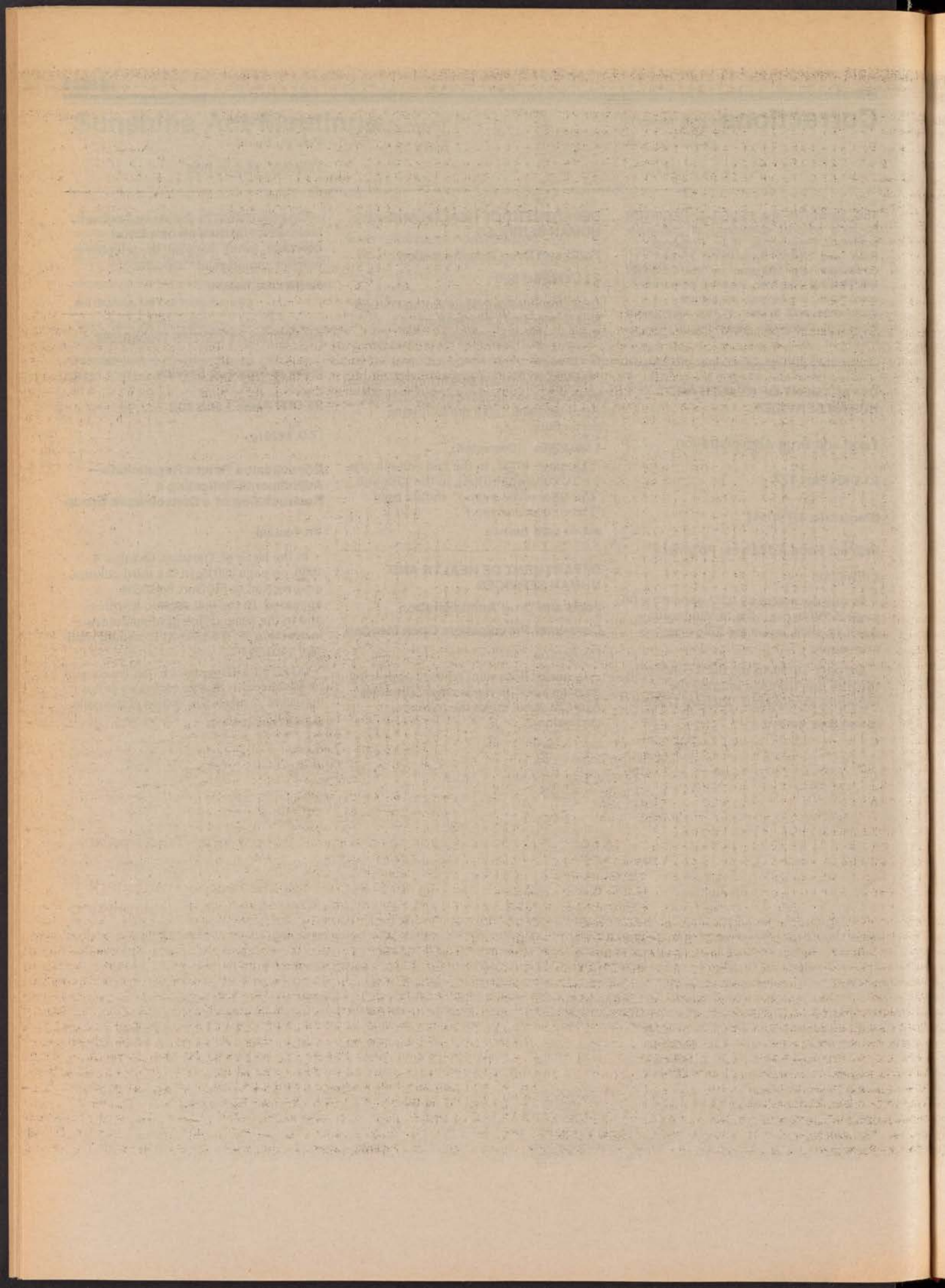
Consolidated Return Regulations—Adjustments Reflecting a Restructuring of a Consolidated Group

Correction

In the issue of Tuesday, October 4, 1988, on page 39015, in the third column, a correction to FR Doc. 88-20394 appeared. In the last section heading, and in the second line of amendatory instruction 3, "§ 1.1503-31T" should read "§ 1.1502-31T".

NOTE: For a Department of the Treasury, Internal Revenue Service correction to this document, see the Rules section of this issue.

BILLING CODE 1505-01-D



Test Report Federal Register

Thursday
May 4, 1989

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Amendments to Patent and Trademark
Rules to Implement Trademark Law
Revision Act; Miscellaneous Trademark
Rule Amendments; Proposed Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90374-9074]

RIN 0651-AA38

Amendments to Patent and Trademark Rules to Implement Trademark Law Revision Act; Miscellaneous Trademark Rule Amendments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes amendments to the rules of practice in trademark cases, and to rules of practice in patent cases which are applicable to trademark cases, to implement the provisions of the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100-667, 102 Stat. 3935 (15 U.S.C. 1051)), codify changes in practice resulting from a Trademark Trial and Appeal Board decision commonly known as the "Crocker" decision, and otherwise codify, clarify, and/or revise certain procedures for the examination of applications.

DATE: Written comments must be submitted on or before June 16, 1989. A public hearing will be held on June 29, 1989 at 9:30 a.m. Requests to present oral comments at the hearing should be received on or before June 23, 1989.

ADDRESS: Address written comments to Box 5, Office of the Assistant Commissioner for Trademarks, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Carlisle E. Walters. The hearing will be held in Room 912, on the 9th floor of Crystal Park Building 2, located at 2121 Crystal Drive, Arlington, Virginia.

Written comments will be available for public inspection in Room 910, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Carlisle E. Walters by telephone at (703) 557-7464 or by mail marked to her attention and addressed to Box 5, Office of the Assistant Commissioner for Trademarks, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is designed primarily to implement certain provisions of the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100-667, 102 Stat. 3935 (15 U.S.C. 1051)) (hereinafter "Pub. L. 100-667"), which was enacted on November 16, 1988, and which will become effective on

November 16, 1989. The text of the law was published in the *Congressional Record*, S. 1883, 100th Cong., 2d Sess., 134 Cong. Rec. 149, H10411 (daily ed. October 19, 1988), and in *BNA's Patent, Trademark & Copyright Journal*, at 36 PTCJ 751 (October 27, 1988).

The following includes a summary of the "intent-to-use" provisions of Pub. L. 100-667, a summary of the other provisions of Pub. L. 100-667 which are relevant to PTO practice, a list of rules proposed to be changed as a result of Pub. L. 100-667, a brief discussion of other rules proposed to be changed and the reasons for those changes, and a detailed section-by-section analysis of the proposed rule change.

Discussion of "Intent-to-Use" Provisions of Pub. L. 100-667

Pub. L. 100-667 substantially revises the Trademark Act of 1946 ("Act"). Previously, the Act permitted the filing of an application for Federal registration of a trademark based upon use of the mark in commerce in connection with goods or services, under section 1 of the Act; or, ownership of a foreign application or registration, under section 44 of the Act. The new law adds a third basis for the filing of an application, namely, a bona fide intention to use a mark in commerce in relation to specific goods or services. For these "intent-to-use" applications, actual use of the mark in commerce will be a prerequisite to the ultimate issuance of a registration.

Section 103, Pub. L. 100-667, 102 Stat. 3935, amends Section 1 of the Act to permit the filing of an application for Federal registration of a trademark based upon either use of the mark in commerce or a bona fide intention to use the mark in commerce. Use-based applications will be governed by an amended and redesignated section 1(a) of the Act. A new section 1(b) of the Act authorizes the filing of "intent-to-use" applications and sets forth the filing requirements of such applications.

Section 113, Pub. L. 100-667, 102 Stat. 3940, amends section 12 of the Act, concerning examination of applications and publication, to provide that if the Trademark Examining Attorney examines an "intent-to-use" application and finds that the applicant would be entitled to registration upon the acceptance of a statement of use, the mark will be published in the *Official Gazette* for purposes of opposition.

Section 114, Pub. L. 100-667, 102 Stat. 3940, amends Section 13 of the Act, concerning opposition to registration of marks on the Principal Register, to add a new section 13(b) to govern the handling of applications which are not successfully opposed. New section 13(b)

provides that, unless registration is successfully opposed, a notice of allowance will be issued to the applicant in an "intent-to-use" application.

Section 103, Pub. L. 100-667, 102 Stat. 3935, further amends section 1 of the Act by adding a new section 1(c), which permits an "intent-to-use" applicant, at any time during examination, to amend the application to bring it into conformity with the requirements for an application based on use; and by adding a new section 1(d) which sets forth the registration requirements for an "intent-to-use" application following issuance of a notice of allowance.

Section 1(d)(1) of the Act requires that, within six months after the issuance of the notice of allowance, the applicant must file specimens evidencing use of the mark in commerce, the prescribed fee, and a verified statement which asserts that the mark is in use in commerce and contains certain averments related to that use.

Section 1(d)(2) provides that the time for filing the statement of use will be extended for a period of six months upon written request of the applicant, if the request is filed before expiration of the six-month period for filing a statement of use. The request must be accompanied by the prescribed fee and a verified statement that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance for which that intention exists.

Section 1(d)(2) provides that further extensions of time for filing a statement of use may be granted by the Commissioner, for periods aggregating not more than 24 months, upon a showing of good cause by the applicant. A written request must be filed before the expiration of the last granted extension and accompanied by the prescribed fee and by a verified statement (of continued bona fide intention to use the mark in commerce) as required for the first extension of time. The Commissioner is to issue regulations setting forth what constitutes good cause for a further extension of time for filing a statement of use.

Section 1(d)(3) of the Act provides that any applicant who files a statement of use will be notified of the acceptance or refusal thereof and, if the statement is refused, of the reasons for the refusal; and that the statement of use may be amended.

Section 1(d)(4) of the Act provides that the failure of an applicant to timely file a statement of use, as required under

section 1(d) of the Act, will result in the abandonment of the application.

Discussion of Other Provisions of Pub. L. 100-667

The new law includes certain other provisions which significantly affect practice in the PTO. Section 104, Pub. L. 100-667, 102 Stat. 3937, amends section 2(f) of the Act, pertaining to registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The amendment will permit the Commissioner to accept, as prima facie evidence that a mark has become distinctive, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for "five years before the date on which the claim of distinctiveness is made." The Act previously permitted such a showing by the applicant to be only for "the five years next preceding the date of the filing of the application."

Section 109, Pub. L. 100-667, 102 Stat. 3938, adds a new section 7(c) to the Act to provide, *inter alia*, that contingent on the registration of a mark on the Principal Register, the filing of an application to register such mark on the Principal Register shall constitute constructive use of the mark and confer nationwide priority.

Section 110, Pub. L. 100-667, 102 Stat. 3939, amends section 8(a) of the Act to provide that each certificate of registration shall remain in force for ten (rather than twenty) years. Section 110 further amends section 8(a) of the Act to require that the affidavit, which must be filed during the sixth year after issuance of a registration, set forth "those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, * * *" instead of the previous requirement for a "showing that said mark is in use in commerce * * *"

Section 111, Pub. L. 100-667, 102 Stat. 3939, amends section 9(a) of the Act to reduce the term for which a registration may be renewed from twenty years to ten years. Similarly, section 135, Pub. L. 100-667, 102 Stat. 3948, amends the Act by adding a new section, section 51, which provides that certificates of registration which issue from applications pending in the PTO on November 16, 1989, the effective date of the new law, shall remain in force for a period of ten years.

Section 118, Pub. L. 100-667, 102 Stat. 3941, amends section 18 of the Act to expand a portion of the description of the actions which may be taken by the Trademark Trial and Appeal Board

("Board"), in an inter partes proceeding, from "may refuse to register the opposed mark, may cancel or restrict the registration of a registered mark, or may refuse to register any or all of several interfering marks, * * *" to "may refuse to register the opposed mark, may cancel the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register the registration of a registered mark, may refuse to register any or all of several interfering marks, * * *". The same section of the new law further amends section 18 of the Act to provide, with respect to inter partes proceedings before the Board, that no final judgment shall be entered in favor of an intent-to-use applicant before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c) of the Act, as amended by section 109, Pub. L. 100-667, 102 Stat. 3938.

Section 121, Pub. L. 100-667, 102 Stat. 3942, amends section 23 of the Act, which governs applications for registration on the Supplemental Register, to delete the requirement that the mark must have been in lawful use in commerce for the year preceding the filing of the application; and to substitute therefor a requirement that the mark must be in lawful use in commerce by the owner.

Section 122, Pub. L. 100-667, 102 Stat. 3943, amends section 24 of the Act, which governs petitions to cancel registrations on the Supplemental Register, to delete the requirement that such a petition be verified, and to add a provision that (in such a cancellation proceeding) no final judgment shall be entered in favor of an intent-to-use applicant before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c) of the Act, as amended.

Finally, section 133, Pub. L. 100-667, 102 Stat. 3946, amends section 44 of the Act to require that an application filed pursuant to section 44(d) or 44(e) of the Act include a statement that the applicant has a bona fide intention to use the mark in commerce. The new law further amends section 44(e) of the Act to specify that use in commerce shall not be required prior to registration in the case of an application under that section of the Act.

Specific Rules Proposed To Be Changed or Added

The existing rules of practice in Parts 1 and 2 of Title 37 of the Code of Federal Regulations which are proposed to be amended as a result of the enactment of

Pub. L. 100-667 are §§ 1.1, 1.8, 2.6, 2.21, 2.33, 2.38, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.52, 2.53, 2.56, 2.57, 2.61, 2.64, 2.65, 2.69, 2.71, 2.72, 2.73, 2.75, 2.81, 2.82, 2.84, 2.86, 2.87, 2.99, 2.101, 2.111, 2.129, 2.133, 2.161, and 2.162. In addition, new §§ 2.2, 2.59, 2.76, 2.77, 2.88, and 2.89 are proposed to be added. The amendments proposed to be made to existing rules, and the provisions of the new rules proposed to be added, are described in detail hereafter.

Other changes are proposed to be made in the rules of practice in trademark cases as a result of the decision of the Board in *Crocker National Bank v. Canadian Imperial Bank of Commerce*, 223 USPQ 909 (TTAB 1984) ("*Crocker*"). Prior to *Crocker*, an applicant applying under Section 44 of the Act was allowed, under present § 2.39, to omit certain of the allegations required for an application based on use, namely, the allegation that the mark sought to be registered was in use in commerce, and the statements of the applicant's date of first use of the mark, and first use of the mark in commerce, on or in connection with the specified goods or services. Nevertheless, it was the practice of the PTO to require such an applicant to allege use of the mark (somewhere in the world) and to submit specimens of the mark as used on or in connection with the specified goods or services. The Board held in *Crocker*, however, that an applicant filing in accordance with Section 44 need not allege use or submit specimens. The practice of the PTO was thereafter modified to bring it into accordance with the Board's decision. The rules of practice which are proposed to be amended to codify the present practice are §§ 2.21, 2.33, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.56, and 2.72. As indicated above, those rules are also proposed to be amended to implement changes in practice required as a result of the enactment of Pub. L. 100-667.

Additionally, certain miscellaneous amendments are proposed to be made to codify, clarify, and/or revise procedures for the examination of applications. Specifically, § 2.18 is proposed to be amended to clarify the practice of the PTO regarding correspondence with foreign applicants. Section 2.24 is proposed to be amended to correct a cross-reference. Section 2.31 is proposed to be amended to indicate that it is preferable that an application be on "lettersize" (i.e., 8½ inches by 11 inches) rather than legal-size, paper. Section 2.52(e) is proposed to be amended to simplify the drawing color linings for the colors orange and yellow or gold. Sections 2.56, 2.57, and 2.58 are

proposed to be amended to reduce the number of specimens or facsimiles required to be filed in those instances where specimens are necessary, from five to two, and to indicate that specimens or facsimiles may not exceed eleven inches in length. When specimens exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens. Section 2.83, which governs procedure in the case of conflicting marks, is proposed to be amended to delete a provision which does not conform to present PTO practice, namely, the provision that a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest-filed mark (or, if the conflicting applications have the same effective filing date, of the publication or issuance of the application with the earliest date of execution). Section 2.185, which specifies the requirements for assignments, is proposed to be amended to revise that part of the rule relating to the requirement for identification in the assignment of the application or registration being assigned. Finally, § 2.187 is proposed to be amended to revise the conditions under which a certificate of registration will be issued in the name of an applicant's assignee, or in an applicant's new name.

Discussion of Specific Sections Proposed To Be Changed or Added

In this discussion, "Patent and Trademark Office" is abbreviated as "PTO," "Trademark Trial and Appeal Board" is abbreviated as "Board," the Trademark Act of 1946 is abbreviated as "the Act," and all references to sections of the Act are as amended by Pub. L. 100-667, unless otherwise stated.

Section 1.1, which specifies the address to be used on communications intended for the PTO, and also provides special box designations which may be used on certain types of communications to the PTO, is proposed to be amended to add new paragraph (h) which establishes a new separate receipt box for the following papers: statements of use under section 1(d) of the Act, requests for extensions of time to file such statements, and amendments to allege use under section 1(c) of the Act. The new paragraph encourages, but does not require, applicants to use the designation "Box ITU" when submitting the identified papers. Use of the box designation will permit prompt and efficient processing of the identified papers.

Section 1.8, which provides that certain papers will be considered filed in the PTO on the date the papers are

certified as mailed, subject to specified conditions, is proposed to be amended to add new paragraphs (a)(2)(xiv) through (a)(2)(xvi) to except the following papers from the "Certificate of Mailing" procedure established under the section: statements of use under proposed § 2.88 (15 U.S.C. 1051(d)), requests for extensions of time to file such statements, and amendments to allege use under proposed § 2.76 (15 U.S.C. 1051(c)). The specified papers are proposed to be excepted due to the nature and significance of the papers. Before a registration can be issued in an application under section 1(b) of the Act, either an amendment to allege use or a statement of use must be filed and accepted. An amendment to allege use may be submitted only during the examination of an application prior to approval of the mark for publication for opposition in the Trademark *Official Gazette*. After issuance of a notice of allowance in an application under section 1(b) of the Act, applicant must file either a statement of use or request a six-month extension of time to file a statement of use within six months thereafter (successive extension requests may not aggregate more than 36 months from the notice of allowance). Each of these papers is required to be filed within tight time frames and should be processed by the PTO expeditiously. Thus, to avoid problems related to mail delays, these papers are proposed to be excepted from the "Certificate of Mailing" procedure.

Section 2.2 is proposed to be added to establish a definitions section for Part 2 of 37 CFR.

Section 2.2(a) is proposed to be added to state that all references to "the Act" pertain to the Trademark Act of 1946.

Section 2.2(b) is proposed to be added to state that all references, for example in §§ 2.101 and 2.111, to "entity" include both natural and juristic persons.

Section 2.6, which governs trademark fees, is proposed to be amended to add paragraphs (x) and (y) to establish two new fees for the filing of papers required or permitted under section 1(c) or 1(d) of the Act. Section 2.6(a) establishes the fee for filing an application, per class, and it is proposed to be applicable to all new applications filed in the PTO, regardless of the basis asserted for filing. Section 2.6(x) is proposed to be added to establish a filing fee of \$100.00 for an amendment to allege use under proposed § 2.76 (15 U.S.C. 1051(c)) or for a statement of use under proposed § 2.88 (15 U.S.C. 1051(d)). Section 2.6(y) is proposed to be added to establish a filing fee of \$100.00 for any request, under § 2.89 (15 U.S.C. 1051(d)), for a

six-month extension of time to file a statement of use.

The PTO is proposing to amend § 2.6 to establish new fees required under provisions of Pub. L. 100-667. A fee is required under section 1(b)(2) of the Act for the filing of an application under section 1(b) of the Act ("intent-to-use"). A fee is required under section 1(d)(1) of the Act for the filing of a statement of use in an application under section 1(b) of the Act; and a fee is required under section 1(d)(2) of the Act for the filing of a request for an extension of time to file a statement of use. A fee is being established for an amendment to allege use, which is filed under section 1(c) of the Act, to bring an application under section 1(b) of the Act into conformity with the requirements of section 1(a) of the Act ("use in commerce"). These actions are consistent with section 103(a) of Pub. L. 100-703 which changes the way fees established under Section 31 of the Act may be adjusted.

Section 103(a) of Pub. L. 100-703 provides that the Commissioner cannot establish additional fees under section 31 of the Act during fiscal years 1989, 1990 and 1991. However, Pub. L. 100-667 requires that the fees for filing an application under section 1(b) of the Act, a statement of use, and a request for an extension of time to file a statement of use be established. Further, Congressman Kastenmeier has stated that "the Commissioner is not precluded from charging a new fee for a new service or material or from charging a different fee where a significant and material improvement in service or material, such as in promptness or quality is offered. Under any circumstances, augmented fees ought to be clearly justified and reported to the Congress." *Congressional Record*, S. 1883, 100th Cong., 2d Sess., 134 Cong. Rec. 149, H9677 (daily ed. October 5, 1988). Amendments to allege use filed under section 1(c) of the Act create a new examination practice that was not contemplated when the fees were established for activities performed under the Act and this fee is clearly not an increase in an existing fee.

On February 15, 1989, a final rule was published in the *Federal Register* at 54 FR 6893 to adjust patent and trademark fees. Effective April 17, 1989, three trademark fees were reduced: the fee for filing an application for trademark registration was reduced from \$200 to \$175 per class, and two fees for recording trademark assignments or other papers relating to a registered mark or application for registration were reduced from \$100 to \$8.

In establishing the new fees related to Pub. L. 100-667, the PTO followed the fee methodology which was described in the February 15, 1989, *Federal Register* notice (54 FR 6893), and is summarized as follows:

Cost Calculations

The PTO calculated unit costs for the proposed fees based on OMB Circular A-25, "User Fees," and OMB Circular A-130, "Management of Federal Information Resources." Costs were determined from the best available records (for example, the FY 1987 end-of-year financial statements for the Office) and included direct and indirect costs to the PTO for carrying out the activity, as directed by OMB Circular A-25. To estimate costs for the three-year period from November 1989 to October 1992, the 1987 actual costs were adjusted by the Administration's inflation projection (*Budget of the United States Government, Fiscal Year 1990*, Part 3, "The Economy and the Budget"). For example, this methodology was utilized in conjunction with an analysis of the worksteps and procedures that will be involved in the processing of a new application to register a mark under section 1(b) of the Act. The PTO has determined that the processing and examination of an application under section 1(b) of the Act from the filing date through issuance of a notice of allowance is expected to cost the same as the processing and examination of an application under section 1(a) of the Act from the filing date through issuance of the certificate of registration. Therefore, the fee for applications filed under section 1(a) or 1(b) is proposed to be the same.

Workload Projections

The PTO has estimated that there will be a one time, twenty-five percent (25%) increase in trademark applications filed in FY 1990, bringing the estimated trademark application filings for FY 1990 to approximately 100,000. In FY 1991, the PTO estimates that approximately 86,700 trademark applications will be filed and that, thereafter, trademark application filing increases will drop to normal levels (approximately six percent (6%) over the previous year) for the remainder of the fee cycle. The PTO estimates that sixty percent (60%) of the total applications filed in FY 1990 and subsequent years in this fee cycle will be filed under section 1(b) of the Act.

The PTO estimates that, beginning in FY 1991, the first requests for extensions of time to file a statement of use will be filed; and that these requests will be filed in approximately ten percent (10%) of the section 1(b) applications filed in

the prior year. In FY 1992, the filing of requests for extensions of time to file a statement of use will increase to sixteen percent (16%) of the new section 1(b) applications filed in the previous year and remain at that level during the remainder of the fee cycle.

The PTO estimates that approximately twenty-five percent (25%) of all applications filed under section 1(b) of the Act will be abandoned before the filing of either an amendment to allege use, under section 1(c) of the Act, or a statement of use, under section 1(d) of the Act.

The PTO estimates that twenty-five percent (25%) of all applications filed under section 1(b) of the Act will be amended to conform to the provisions of section 1(a) of the Act (by the filing of an amendment to allege use under proposed § 2.76) during the first examination of the application, before approval of the mark for publication for opposition; and that this filing will increase first examination processing by a factor of forty percent (40%).

The PTO estimates that a statement of use under proposed § 2.88 will be filed in fifty percent (50%) of all applications filed under section 1(b) of the Act; and that the second examination required under section 1(d)(1) of the Act will require additional processing time equal to forty percent of the processing time required for the first examination.

Fee Adjustment Methodology

Based on the fee methodology described in the February 15, 1989, *Federal Register* notice (54 FR 6893), the projected revenue from these fees is well within the ceiling imposed by Pub. L. 100-703; that is, in the aggregate, the PTO will be recovering no more than the amount generated by fluctuations in the Consumer Price Index over the past three years.

The PTO has detailed cost calculation worksheets for each fee item, which are available for public inspection in Suite 914 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

Section 2.18, which specifies to whom correspondence will be sent by the PTO, is proposed to be revised to add a new sentence to the section to clarify PTO policy regarding correspondence with foreign applicants. The proposed sentence provides that PTO correspondence will be sent to the domestic representative of a foreign applicant unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event correspondence will be sent to the attorney at law or other qualified person duly authorized. The

section, as proposed to be amended, conforms to present § 2.24.

Section 2.21(a), which governs the requirements for receiving an application filing date, is proposed to be amended by revising paragraphs (a)(5) and (a)(6) and adding new paragraphs (a)(5)(i), (a)(5)(ii), (a)(5)(iii) and (a)(5)(iv) to revise the minimum filing requirements for applications under section 1(a) or 44 of the Act, and to add minimum filing requirements for applications under section 1(b) of the Act. A requirement that an application be verified by the applicant in order to receive a filing date is proposed to be added for all types of applications. The minimum filing requirements for an application under section 44 are proposed to be revised to comply with the *Crocker* decision and to implement the provisions of Pub. L. 100-667.

Section 2.21(a)(5), which presently specifies the filing date requirement of at least one specimen or facsimile of the mark as actually used, is proposed to be revised to delete that requirement from the paragraph and to indicate that the four new paragraphs proposed to be added thereunder all relate to the assertion of a basis for filing.

Section 2.21(a)(5)(i) is proposed to be added to specify all filing requirements which pertain only to the assertion of a basis for filing an application under section 1(a) of the Act, namely, the statement of a date of first use in commerce and at least one specimen or facsimile of the mark as actually used.

Section 2.21(a)(5)(ii) is proposed to be added to specify all filing requirements which pertain only to the assertion of a basis for filing an application under section 44(e) of the Act, namely, a claim of a bona fide intention to use the mark in commerce and a certification or a certified copy of the foreign registration on which the application is based. In accordance with *Crocker*, the paragraph, as proposed, contains no requirement for a statement of use of the mark anywhere or for the filing of a specimen or facsimile of the mark as used.

Section 2.21(a)(5)(iii) is proposed to be added to specify all filing requirements which pertain only to the assertion of a basis for filing an application pursuant to section 44(d) of the Act, namely, a claim of a bona fide intention to use the mark in commerce and a claim of the benefit of a prior foreign application. In accordance with *Crocker*, the paragraph, as proposed, contains no requirement for a statement of use of the mark anywhere or for the filing of a specimen or facsimile of the mark as used.

Section 2.21(a)(5)(iv) is proposed to be added to specify all filing requirements which pertain only to an assertion of a basis for filing an application under section 1(b) of the Act, namely, a claim of a bona fide intention to use the mark in commerce.

Section 2.21(a)(6), which presently includes certain of the filing requirements proposed to be incorporated in new paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(iii), is proposed to be revised to require that an application include a verification in accordance with § 2.33(b), signed by the applicant, as a condition for receiving a filing date. The proposed requirement is in accordance with sections 1 and 44 of the Act.

Section 2.24, which relates to the designation of a representative by a foreign applicant, is proposed to be revised to clarify language concerning Official communications of the PTO to indicate that such communications will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event such communication will be sent to the attorney at law or other qualified person duly authorized. Additionally, the section is proposed to be revised to correct cross-references. Cross-references to § 10.14 of the subchapter, which now governs qualifications of individuals to practice before the PTO in trademark and other non-patent cases, are proposed to be substituted for the cross-references to § 2.12, which has been removed.

Section 2.31, which relates to the form of an application, is proposed to be revised to delete reference to legal-size paper as one of the preferred types of paper for trademark applications. This proposed amendment conforms to § 2.128(b), which governs briefs in inter partes proceedings before the Board, and to the standards of Federal court practice.

Section 2.33, which specifies the complete requirements for a written application, is proposed to be amended by changing the section title from "Requirements for application." to "Requirements for written application." revising certain existing paragraphs, redesignating and revising certain other existing paragraphs, and adding three new paragraphs to, *inter alia*, incorporate in this section the requirements for an application under section 44 of the Act, and add the requirements for an application under section 1(b) of the Act. The proposed application requirements for an application under section 44 of the Act

are in accordance with the *Crocker* decision.

Section 2.33(a)(1)(ii), which requires a statement of applicant's citizenship, is proposed to be revised to clarify the language of the section and to codify the requirement that an applicant which is a partnership must specify in the application the state or nation under the laws of which the partnership is organized.

Section 2.33(a)(1)(iv), which presently requires a statement that applicant has adopted and is using the mark shown in the accompanying drawing, is proposed to be revised to limit this requirement to an application under section 1(a) of the Act; and to add, for an application under section 1(b) or 44 of the Act, a requirement for a statement that applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce.

Section 2.33(a)(1)(v), which presently requires an identification of the particular goods on or in connection with which the mark is used, is proposed to be revised to include a reference to services, as well as goods; to limit the requirement to an application under section 1(a) of the Act; and to add, for an application under section 1(b) or 44 of the Act, the requirement for an identification of the particular goods or services on or in connection with which the applicant has a bona fide intention to use the mark. The paragraph is proposed to be amended further to incorporate the provision, presently included in § 2.39, that the goods or services specified in an application under Section 44 may not exceed the scope of the goods or services covered by the foreign application or registration.

Section 2.33(a)(1)(vi), which presently requires a statement of the class of merchandise according to the official classification, if known to the applicant, is proposed to be revised to substitute the words "goods or services" for the word "merchandise."

Section 2.33(a)(1)(vii), which presently requires a statement of the date of applicant's first use of the mark as a trademark on or in connection with goods specified in the application, is proposed to be revised to include references to a service mark, as well as a trademark, and to services, as well as goods; to limit the requirement to an application under section 1(a) of the Act; and to add for such an application the requirement, presently stated in paragraph (a)(1)(viii) of the section, for a statement of applicant's date of first use of the mark in commerce on or in connection with the goods or services

listed in the application, specifying the nature of such commerce.

Section 2.33(a)(1)(viii), which presently requires a statement of the date of applicant's first use in commerce of the mark as a trademark on or in connection with goods specified in the application, specifying the nature of such commerce, is proposed to be revised to remove this requirement, which is proposed to be added to paragraph (a)(1)(vii); and to incorporate the requirements, presently stated in § 2.39(a), concerning submission, with an application under section 44(e) of the Act, of a certificate of the trademark office of the applicant's country of origin and, if the certificate is not in the English language, of a translation thereof.

Section 2.33(a)(1)(ix), which presently requires a statement of the mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods specified, is proposed to be redesignated as (a)(1)(x); revised to indicate that this requirement pertains only to an application under section 1(a) of the Act; and amended to include a requirement, for an application under section 1(b) of the Act, for a statement of the intended mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified.

A new section 2.33(a)(1)(ix) is proposed to be added to require, for an application claiming the benefit of a foreign registration in accordance with section 44(d) of the Act, that the application comply with the requirements of § 2.39.

Section 2.33(a)(2), which presently provides that if more than one item of goods is specified in the application, the dates of use required in present paragraphs (a)(1)(vii) and (viii) of the section need be for only one of the items specified, provided the particular item to which the dates apply is designated, is proposed to be revised to refer to services as well as goods and to delete the cross-reference to paragraph (a)(1)(viii), the present substance of which is proposed to be incorporated in paragraph (a)(1)(vii).

Section 2.33(b), which presently states the requirement that an application include certain averments concerning ownership of the mark, use of the mark in commerce, and the truth of the statements contained in the application, is proposed to be redesignated as (b)(1); revised to indicate that the requirement of the paragraph pertains only to an application under section 1(a) of the Act; and revised to clarify the language of

the paragraph and to make such language gender neutral.

Section 2.33(b)(2) is proposed to be added to specify, for an application under section 1(b) or 44 of the Act, a requirement that the application include certain averments concerning ownership of the mark, the truth of the statements contained in the application, and applicant's bona fide intention to use the mark in commerce on or in connection with the specified goods or services.

Section 2.33(c), which concerns the applicability of this section to an application for the registration of a mark for goods or services falling within multiple classes, is proposed to be revised to amend a cross-reference to indicate § 2.86, as proposed to be amended.

Section 2.33(d) is proposed to be added to state that an applicant may not file under both sections 1(a) and 1(b) of the Act in a single application, nor may an applicant in an application under section 1(a) of the Act amend that application to seek registration under section 1(b) of the Act. The proposal that an applicant under section 1(a) of the Act be precluded from amending the application to seek registration under section 1(b) of the Act is based upon the language of section 1(b) of the Act which requires that an application under the section include, upon filing, a verified statement of a bona fide intention to use the mark in commerce; however, an application filed under section 1(a) of the Act does not include such a statement and cannot be based on a bona fide intention to use a mark. There is no proposed prohibition against amending the basis for an application from section 1(b) to section 1(a) of the Act because section 1(a) requires that an application thereunder assert use in commerce prior to the filing date of the application. This is a factual assertion that is verifiable at any time.

Section 2.38 is proposed to be revised to correct a cross-reference which presently is correct but would be incorrect if the amendments proposed herein for § 2.33 are adopted. Specifically, § 2.38 is proposed to be revised to refer to § 2.33(a)(1)(vii) rather than § 2.33(a)(1) (vii) and (viii).

Section 2.39, which presently contains provisions concerning the omission of an allegation of use in commerce and statements of dates of first use in applications filed under section 44 of the Act, as well as provisions specifying certain requirements for such applications, is proposed to be amended by changing the section title from "Omission of allegation of use in commerce by foreign applicants." to "Priority claim based on foreign

application," revising paragraphs (a) and (b), and adding new paragraph (c). The purpose of the proposed amendments is to delete the omission provisions and the provisions specifying requirements for applications under section 44(e) of the Act, which provisions are subsumed by § 2.33 as proposed to be amended; and to add certain provisions concerning applications claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act.

Section 2.39(a), which presently contains certain provisions concerning the omission of an allegation of use in commerce and statements of dates of first use by applicants filing under section 44(e) of the Act, as well as provisions specifying certain requirements for such applications, is proposed to be revised to delete those provisions, which are subsumed by § 2.33 as proposed to be amended, and to add certain of the requirements for filing an application in accordance with section 44(d) of the Act.

Section 2.39(b), which presently contains provisions concerning the omission of an allegation of use in commerce and of statements of dates of first use by applicants filing under section 44(d) of the Act, and a statement of certain other requirements for an application in accordance with section 44(d) of the Act, is proposed to be revised to delete the omission provisions, which are subsumed by § 2.33, as proposed to be amended; and to delete the present requirement for submission, before the application can be approved for publication, of a certificate of the trademark office of the applicant's country of origin, which requirement is subsumed by proposed new paragraph (c) of § 2.39.

Section 2.39(c) is proposed to be added to provide that before an application filed in accordance with section 44(d) of the Act can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act, must be established; that the PTO will assume that basis to be section 44(e) unless otherwise stated in the application within six months of the filing date of the foreign application forming the basis of the section 44(d) claim; and that the filing of a paper, which claims a different basis for registration, more than six months after the filing date of the foreign application will result in a loss of priority under section 44(d). The proposed provisions codify existing practice and are in accordance with the decision of the Commissioner in *In re Daiwa Seiko, Inc.*, 230 USPQ 794 (Comm'r Pat. 1983). That case held that in an application

claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act, the effective filing date of the application depends upon the basis ultimately asserted for registration and, if that basis is use in commerce rather than the ensuing foreign registration under section 44(e), that the effective filing date of the application will be the date of the amendment to assert use in commerce, unless the amendment was filed within six months of the filing of the foreign priority application (in which case the filing date is unchanged).

Section 2.41(a), which relates to proof of distinctiveness of a mark, pursuant to section 2(f) of the Act, is proposed to be revised to indicate that allegations and evidence of acquired distinctiveness must be based upon use of the mark on or in connection with goods or services "in commerce."

Section 2.41(b) is proposed to be revised in the same manner as § 2.41(a) above, and is proposed to be revised further to implement section 104 of Pub. L. 100-667. Section 2(f) of the Act presently requires an applicant relying upon an allegation of five years of substantially exclusive and continuous use of a mark in commerce in support of a claim of distinctiveness to assert that such use was made during the five years next preceding the filing date of the application. Section 104 of Pub. L. 100-667 amends section 2(f) of the Act to permit an applicant to rely upon such use made for the five years before the date on which the claim of distinctiveness is made.

Section 2.44, which presently requires that an application to register a collective mark include certain statements concerning the class of persons entitled to use the mark, their relationship to the applicant, and the nature of applicant's control over the use of the mark, is proposed to be amended to redesignate the present paragraph as (a); revise redesignated paragraph (a) to indicate that it pertains only to applications under section 1(a) of the Act; and add a new paragraph (b) which requires, for collective mark applications under section 1(b) or 44 of the Act, that the application include certain statements concerning the class of persons entitled to use the mark, their relationship to the applicant, and the nature of applicant's control over the use of the mark.

Section 2.45, which presently requires that an application to register a certification mark include certain statements concerning the use of the mark, applicant's control thereover, and that applicant is not engaged in the

production or marketing of the goods or services to which the mark is applied, is proposed to be amended to redesignate the present paragraph as (a); revise redesignated paragraph (a) to indicate that it pertains only to applications under section 1(a) of the Act; and add a new paragraph (b) which requires, for certification mark applications under Section 1(b) or 44 of the Act, that the application include certain statements concerning the intended use of the mark, applicant's intended control thereover, and that applicant will not engage in the production or marketing of the goods or services to which the mark is applied.

Section 2.47, which governs applications to register on the Supplemental Register, is proposed to be amended to redesignate the present paragraph as (a); revise redesignated paragraph (a); and add new paragraphs (b), (c) and (d) to implement certain provisions of Pub. L. 100-667.

Section 2.47(a), as redesignated, is proposed to be revised to implement section 23 of the Act by eliminating provisions pertaining to the requirement for one year of use of the mark for an application for registration on the Supplemental Register.

Section 2.47(b) is proposed to be added to provide, in accordance with the *Crocker* decision, that in an application to register on the Supplemental Register under section 44 of the Act, the statement of lawful use in commerce may be omitted.

Section 2.47(c) is proposed to be added to provide that a mark in an application to register on the Principal Register under section 1(b) of the Act is eligible for registration on the Supplemental Register only after an acceptable allegation of use under section 1(c) or (d) of the Act has been timely filed. Section 23 of the Act requires lawful use in commerce as a prerequisite for an application for registration on the Supplemental Register. This requirement bars an application under section 1(b) of the Act from the Supplemental Register until an acceptable allegation of use has been submitted.

Section 2.47(d) is proposed to be added to provide that an application for registration on the Supplemental Register must conform to the requirements for registration on the Principal Register under section 1(a) of the Act so far as applicable.

Section 2.51, which specifies certain general requirements for drawings, is proposed to be amended by redesignating present paragraph (a) as (a)(1), revising paragraph (a)(1), adding new paragraphs (a)(2) and (a)(3), redesignating present paragraph (b) as

(b)(1), revising paragraph (b)(1), adding new paragraphs (b)(2) and (b)(3), revising paragraph (c), redesignating and republishing present paragraph (d) as (e), and adding a new paragraph (d) to codify existing practice and to specify certain drawing requirements for applications under section 1(b) of the Act and applications under section 44 of the Act.

Section 2.51(a), which presently requires that the drawing of a trademark be a substantially exact representation of the mark as used on or in connection with the goods, is proposed to be redesignated as (a)(1) and revised to indicate that it pertains only to applications under section 1(a) of the Act.

Section 2.51(a)(2) is proposed to be added to provide that, in an application under section 1(b) of the Act, the drawing of a trademark shall be a substantially exact representation of the mark as intended to be used on or in connection with the goods specified in the application and, that once an amendment to allege use under proposed § 2.76, or a statement of use under proposed § 2.88 has been filed, the drawing of the trademark shall be a substantially exact representation of the mark as used.

Section 2.51(a)(3) is proposed to be added to provide that, in an application under section 44 of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of the applicant.

Section 2.51(b), which presently specifies, for service marks, requirements similar to those specified in paragraph (a) for trademarks, is proposed to be amended by redesignating the present paragraph as (b)(1) and adding paragraphs (b)(2) and (b)(3) to parallel, for service marks, the provisions of proposed paragraphs (a)(1), (a)(2) and (a)(3).

Section 2.51(c), which presently provides that, when appropriate and necessary, the drawing in an application for registration on the Supplemental Register may be the drawing of a package or configuration of goods, is proposed to be revised to delete that provision, which is outdated, and to add a provision codifying the practice that the drawing of a service mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description.

Section 2.51(d) is proposed to be redesignated as (e) and a new paragraph (d) is proposed to be added to provide

that broken lines should be used in the drawing of a mark to show placement of the mark on the goods, or on packaging therefor, or to show matter not claimed as part of the mark, or both, as appropriate, and to provide further that, in an application to register a mark with three-dimensional features, the drawing shall depict the mark in perspective in a single rendition thereof. These proposed provisions codify existing practice.

Section 2.52(a), which pertains to the character of drawings, is proposed to be revised to correct a cross-reference which presently is correct but would be incorrect if the amendments proposed herein for § 2.51 are adopted. Specifically, § 2.52(a) is proposed to be amended to refer to paragraph (e), rather than (d), of § 2.51.

Section 2.52(d), which pertains to drawing headings and which presently includes, *inter alia*, a requirement that the heading of a drawing (except for a drawing in an application under section 44 of the Act) specify dates of use, is proposed to be revised to indicate that the requirement pertains only to an application under 1(a) of the Act; and to add a requirement that the heading of a drawing in an application filed in accordance with section 44(d) of the Act specify the priority filing date of the relevant foreign application.

Section 2.52(e), which pertains to drawing linings for color, is proposed to be revised to simplify the conventional color linings for orange and yellow or gold.

Section 2.53 is proposed to be revised to correct a cross-reference which presently is correct but would be incorrect if the amendments proposed herein for § 2.51 are adopted. Specifically, § 2.53 is proposed to be amended to refer to paragraph (e), rather than (d), of § 2.51.

Section 2.56, which concerns specimens for trademarks, is proposed to be revised to indicate that the requirement for the filing of specimens pertains only to an application under section 1(a) of the Act, an amendment to allege use under proposed § 2.76, and a statement of use under proposed § 2.88; remove the redundant word "actually," in accordance with section 1(a)(1)(C) of the Act; add a provision, in accordance with section 45 of the Act, that if placement of the mark on labels, tags, containers or displays associated with the goods is impracticable, then specimens may be documents associated with the goods or their sale; and reduce the maximum size limit for specimens (the proposed maximum size limit parallels the preferable size of paper for a trademark application as

specified in proposed § 2.31). When specimens exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens. The paragraph is proposed to be revised further to reduce the number of specimens required from five to two. The present requirement for five specimens was adopted to permit members of the public to obtain specimens directly from the application file. Advances in copying technology have rendered the requirement for five specimens unnecessary because members of the public may now obtain quality photocopies of the specimens in the file, making removal of specimens unnecessary.

Section 2.57, which pertains to facsimiles in the case of a trademark, is proposed to be amended to revise paragraph (a) to reduce the number of facsimiles required from five to two, and to reduce the maximum size limit for specimens (the proposed maximum size limit parallels the preferable size of paper for a trademark application as specified in proposed § 2.31); and to revise paragraph (b) by removing the redundant word "actually," in accordance with section 1(a)(1)(C) of the Act. When facsimiles exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens.

Section 2.58(b), which concerns the filing of audio cassette tape recordings as specimens for service marks not used in written or printed form, is proposed to be amended to reduce the number of audio tapes required from three to two. The proposed amendment is in conformity with the proposed amendment to § 2.56, which reduces the number of specimens required from five to two.

Section 2.59, entitled "Filing Substitute Specimens," is proposed to be added to specify the requirements related to the filing of substitute specimens for applications under section 1(a) or 1(b) of the Act. The proposed section codifies existing practice with respect to applications under Section 1(a) of the Act and sets forth the requirements which will apply to applications under section 1(b) of the Act.

Section 2.59(a) is proposed to be added to provide that, in an application based upon use in commerce, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that any substitute specimens are properly verified as to their use in commerce at least as early as the filing date of the application. The proposed provision is in accordance with section

1(a) of the Act, which requires use in commerce, evidenced by specimens, as a prerequisite to the filing of an application thereunder.

Section 2.59(b) is proposed to be added to provide that, after the filing of either an amendment to allege use under proposed § 2.76 or a statement of use under proposed § 2.88, in an application under section 1(b) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that the use in commerce of any substitute specimens submitted is supported by applicant's affidavit or declaration in accordance with § 2.20; and to provide further that, in the case of a statement of use under proposed § 2.88, the applicant must verify that the substitute specimens were in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use. Since use in commerce is not required before filing an application under section 1(b) of the Act, there is no requirement that a substitute specimen have been in use at the time of the filing of the application. Furthermore, because an applicant may file a statement of use at any time during the six-month period following the notice of allowance, or at any time during any extension of time for filing a statement of use, a substitute specimen need not be in use any earlier than the expiration of the relevant period.

Section 2.61, which concerns the examination of an application, is proposed to be amended to provide also for the examination of amendments to allege use under section 1(c) of the Act and statements of use under section 1(d) of the Act.

Section 2.61(a) is proposed to be revised to indicate that not only applications for registration, but also amendments to allege use under section 1(c) of the Act and statements of use under section 1(d) of the Act will be examined.

Section 2.61(c) is proposed to be revised to clarify the language.

Section 2.64, which relates to final action by the Trademark Examining Attorney and the applicant's permissible responses thereto, is proposed to be amended by adding new paragraphs (c)(2), (c)(2), and (c)(3) concerning the examination of an amendment to allege use under proposed § 2.76, filed during the six-month response period after issuance of a final action.

Section 2.64(c)(1) is proposed to be added to provide that if an amendment to allege use under proposed § 2.76 is

filed during the six-month response period after issuance of a final action, the Trademark Examining Attorney shall examine the amendment, but that the filing of such an amendment will not extend the time for filing an appeal or petitioning the Commissioner.

Section 2.64(c)(2) is proposed to be added to provide that if the amendment to allege use under proposed § 2.76 is acceptable in all respects, the applicant will be notified of its acceptance.

Section 2.64(c)(3) is proposed to be added to provide that if a new refusal or requirement is necessary as a result of the examination of the amendment to allege use under proposed § 2.76, the final action will be withdrawn and all unresolved objections will be stated in a new non-final action.

Section 2.65(c) is proposed to be added to provide that if an applicant in an application under section 1(b) of the Act fails to timely file a statement of use under proposed § 2.88, the application shall be deemed to be abandoned. The proposed paragraph is in conformity with section 1(d)(4) of the Act.

Section 2.66, which governs the revival of abandoned applications, is proposed to be amended by redesignating the present paragraph as (a), and revising redesignated paragraph (a), which presently provides for the filing of a petition to revive an application abandoned for failure to respond, to pertain also to an application abandoned for failure to timely file a statement of use under proposed § 2.88, in an application under Section 1(b) of the Act. Section 2.66 is proposed to be amended further by transferring the last sentence of paragraph (a), which states the requirements for a petition to revive for failure to respond, to a proposed new paragraph (b), and by adding new paragraphs (c) and (d).

Section 2.66(c) is proposed to be added to state the requirements for a petition to revive an application abandoned for failure to timely file a statement of use under proposed § 2.88, in an application under section 1(b) of the Act. The proposed requirements parallel those stated in present § 2.66 and proposed paragraph (b).

Section 2.66(d) is proposed to be added to provide that a petition to revive must be filed promptly, but that no petition to revive will be granted in an application under section 1(b) of the Act if granting the petition would permit the filing of a statement of use more than 36 months after the issuance of a notice of allowance under section 13(b)(2) of the Act. The proposed 36-month limit for the filing of a statement

of use is in accordance with the provisions of section 1(d) of the Act. Usually a petition to revive will be considered to be filed promptly if it is filed within two months of the date the application was abandoned for failure to respond.

Section 2.69, which pertains to inquiry by the Trademark Examining Attorney as to the applicant's compliance with other laws, is proposed to be revised to delete the words "before allowance." The word "allowance," as presently used in the section, signifies approval of a mark for publication. The purpose of the proposed deletion is to prevent confusion between this word and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.71, which concerns amendments to correct informalities in applications, is proposed to be amended by changing the section title from "Amendments to application," to "Amendments to correct informalities," revising paragraphs (a), (b), and (c); and adding new paragraphs (d)(1), (d)(2), and (d)(3) to govern amendments to the dates of use.

Section 2.71(a), which presently provides for the amendment of applications to correct informalities and for other reasons, and also contains a provision concerning amendments to dates of use, is proposed to be revised by deleting the provision concerning dates of use, which is proposed to be transferred to a new paragraph designated as (d)(1).

Section 2.71(b), which presently provides that additions to the identification of goods or services will not be permitted unless certain specified conditions are met, is proposed to be revised to provide that the identification of goods or services may be amended to clarify or limit the identification, but that additions thereto will not be permitted. The purposes of the requirement for the identification of goods or services are to give notice to third parties of the scope of the rights claimed by the applicant and to permit an accurate search for conflicting marks. Addition of goods or services to the identification, after the filing of an application, would frustrate these purposes. Moreover, section 7(c) of the Act provides that, contingent on the registration of a mark on the Principal Register, the filing of the application to register such mark shall constitute constructive use of such mark on or in connection with the goods or services specified in the registration.

Section 2.71(c), which presently provides, in essence, that a defect in the verification or declaration may be corrected only by the filing of a

substitute or supplemental verification or declaration, is proposed to be revised to clarify the language thereof. The paragraph is proposed to be further revised to provide that a verification or declaration required under §§ 2.21(a)(6), 2.76(e)(3) or 2.88(e)(3), to be properly signed, must be signed by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association; that a verification or declaration which is signed by a person having color of authority to sign, is acceptable for the purpose of determining the timely filing of the paper; but that a properly signed substitute verification or declaration must be submitted before the application will be approved for publication or registration, as the case may be. Persons having a color of authority to sign are those having first-hand knowledge of the truth of the statements in the verification or declaration. In the case of a corporate applicant, a person having color of authority might include, within the contemplation of the proposed section, managers or similar persons who are in positions of authority, although not actually officers, if they have first-hand knowledge of the truth of the statements in the application. However, an applicant's attorney ordinarily will not be considered a person having color of authority to sign, unless, for example, the attorney is also a manager of a corporate applicant and has first-hand knowledge of the truth of the statements in the application.

Section 2.71(d)(1) is proposed to be added to provide that no amendment to the dates of use will be permitted unless the amendment is supported by applicant's affidavit or declaration in accordance with § 2.20 and by such showing as may be required. This provision, which is the second sentence of present § 2.71(a), is proposed to be transferred to new paragraph (d)(1) to be grouped with two other proposed paragraphs, designated (d)(2) and (d)(3), relating to amendments to the dates of use.

Section 2.71(d)(2) is proposed to be added to codify the practice that, in an application under section 1(a) of the Act, no amendment to specify a date of use which is subsequent to the filing date of the application will be permitted. The proposed provision is in accordance with section 1(a) of the Act, which requires use in commerce as a prerequisite to the filing of an application thereunder.

Section 2.71(d)(3) is proposed to be added to provide that after the filing of a statement of use under proposed § 2.88, in an application under section 1(b) of

the Act, no amendment will be permitted to the statement of use to recite dates of use which are subsequent to the expiration of the time allowed to applicant for filing a statement of use. The reason for this proposed limitation is that section 1(d) of the Act requires use of the mark in commerce, in an application under section 1(b) of the Act, within a specified period of time and imposes certain absolute limitations on extensions of that period. Any use later than the time permitted would not comply with the requirements of section 1(d) of the Act.

Section 2.72, which governs amendments to the description or drawing of a mark, is proposed to be amended by redesignating the present paragraph as (b), revising redesignated paragraph (b), and adding new paragraphs (a), (c), and (d).

Section 2.72(a) is proposed to be added to provide that amendments may not be made to the description or drawing of the mark if the character of the mark is materially altered, and that the Trademark Examining Attorney will determine whether a proposed amendment materially alters the character of the mark by comparing the proposed amendment with the description or drawing of the mark as originally filed. Concerning material alteration of a mark see *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ 2d 1483 (Fed. Cir. 1986); *In re Holland American Wafer Co.*, 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984); *United Rum Merchants, Ltd. v. Distillers Corp. (S.A.) Ltd.*, 9 USPQ 2d 1481 (TTAB 1988); *Visa International Service Assn. v. Life-Code Systems, Inc.*, 220 USPQ 740 (TTAB 1983). The first of these two proposed provisions is the last sentence of present § 2.72. The second provision is proposed to be added to codify present practice, the purpose of which is to prevent an applicant from repeatedly amending the mark sought to be registered until it bears little resemblance to the mark as originally filed.

Section 2.72(b), as redesignated, is proposed to be revised to transfer the last sentence thereof, which specifies the general rule concerning amendments to marks, to proposed new § 2.72(a). The remainder of the paragraph, which presently provides that amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) verified as to their use prior to the filing date of the application, is proposed to be further revised to indicate that the

provisions of the paragraph pertain only to applications under section 1(a) of the Act. The proposed amendment is in accordance with section 1(a) of the Act, which requires use in commerce as a prerequisite to the filing of an application thereunder.

Section 2.72(c) is proposed to be added to provide that, in applications under section 1(b) of the Act, amendments to the description or drawing of the mark, which are filed after submission of an amendment to allege use under proposed § 2.76 or a statement of use under proposed § 2.88, may be permitted only if warranted by the specimens (or facsimiles) filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing is in use in commerce; and that in the case of a statement of use under proposed § 2.88, applicant must verify that the mark shown in the amended drawing was in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use. The reason for the latter requirement, in the case of a statement of use, is that section 1(d) of the Act requires use of the mark in commerce, in an application under section 1(b) of the Act, within a specified period of time and imposes certain absolute limitations on extensions of that period. Any use later than the time permitted would not comply with the requirements of section 1(d) of the Act.

Section 2.72(d) is proposed to be added to codify the practice that in applications under section 44 of the Act, amendments to the description or drawing of the mark may be permitted only if warranted by the description or drawing of the mark in the foreign registration certificate.

Section 2.73, which governs amendments to recite concurrent use, is proposed to be amended by redesignating the present paragraph as (a), revising redesignated paragraph (a), and adding new paragraph (b).

Section 2.73(a), as redesignated, which presently provides that an application may be amended so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of § 2.42, is proposed to be revised to indicate that this provision pertains only to an application under section 1(a) of the Act. The Trademark Examining Attorney will determine whether the application, as amended, is acceptable.

Section 2.73(b) is proposed to be added to provide that an application under section 1(b) of the Act may not be amended so as to be treated as an application for a concurrent registration until an acceptable amendment to allege use under proposed § 2.76 or statement of use under proposed § 2.88 has been filed in the application, after which time such an amendment may be made, provided the application as amended satisfies the requirements of § 2.42. To provide otherwise would be to permit an application for concurrent registration based on an intent to use concurrently, which would be in conflict with the well-established legal principle that an applicant for concurrent registration must have adopted and used the mark in good faith without knowledge of the prior right of another in the same or similar mark for the same or similar goods or services. The Trademark Examining Attorney will determine whether the application, as amended, is acceptable.

Section 2.75, which governs amendments to change register, is proposed to be amended to redesignate the present paragraph as (a), revise redesignated paragraph (a), and add new paragraph (b).

Section 2.75(a), as redesignated, which presently provides for amendments to change applications from one register to another and also contains provisions relating to the effect of such an amendment on the filing date of an application, is proposed to be revised to indicate that the paragraph pertains only to applications under section 1(a) or 44 of the Act; and to delete the provisions concerning the effect on the filing date. Prior to the enactment of Pub. L. 100-667, section 23 of the Act required that the mark in an application for registration on the Supplemental Register have been in use for one year prior to the filing of the application, whereas there is no such requirement for an application to register on the Principal Register. However, section 23, as amended, contains no such requirement. Thus, under the Act, as amended, an amendment to change registers has no effect on the filing date of an application under section 1(a) or 44 of the Act.

Section 2.75(b) is proposed to be added to provide that an application under section 1(b) of the Act may be amended to change the application to a different register only after submission of an acceptable amendment to allege use under proposed § 2.76 or statement of use under proposed § 2.88, and that when such an application is changed from the Principal Register to the

Supplemental Register, the effective filing date of the application is the date of the filing of the allegation of use under section 1(c) or 1(d) of the Act. The proposed amendment is in accordance with section 23 of the Act, both in its prior and amended forms, which requires use in commerce as a prerequisite to the filing of an application thereunder.

Section 2.76, entitled "Amendment to allege use," is proposed to be added to govern amendments to allege use under section 1(c) of the Act in an application under section 1(b) of the Act.

Section 2.76(a) is proposed to be added to specify the time when such an amendment may be filed, namely, at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action, and to specify further that, thereafter, an allegation of use may be submitted only as a statement of use under proposed § 2.88 after the mailing of a notice of allowance under section 13(b)(2) of the Act. The proposed paragraph is in accordance with section 1(c) of the Act, which provides that an amendment to allege use thereunder may be filed at any time during examination of an application. The examination of an application extends from the filing of the application to the date the mark is approved for publication or the expiration of the six-month response period after issuance of a final action. The date a mark is approved for publication is the date the approval is entered into the TRAM (Trademark Reporting and Monitoring) System. The date of approval for publication is immediately available to the public through TRAM.

Section 2.76(b) is proposed to be added to specify the elements of a complete amendment to allege use, namely, two specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; the fee prescribed in § 2.6; and a verified statement by the applicant containing certain averments concerning applicant's ownership of the mark and use of the mark in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services.

Section 2.76(c) is proposed to be added to provide that an amendment to allege use may only be filed when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application, unless the amendment is accompanied by a request, in accordance with proposed § 2.87, to divide out from the application the goods or services to which the amendment pertains; and that if more than one item of goods or services is specified in the amendment to allege use, the dates of use required in proposed paragraph (b)(1) of the section need be for only one of the items specified, provided the particular item to which the dates apply is designated. The first provision in the proposed paragraph prevents piecemeal prosecution of an application. The second provision in the proposed paragraph is in conformity with both present and proposed § 2.33(a)(2).

Section 2.76(d) is proposed to be added to provide that an amendment to allege use must be made in a separate paper from any other filing in the application and should be entitled, at the top of the first page of the paper, "Amendment to allege use under § 2.76." If the amendment is not made in a separate paper, it will not be considered and the fee will be refunded.

Section 2.76(e) is proposed to be added to specify minimum filing requirements for an amendment to allege use, namely, that the amendment be filed within the time period specified in proposed paragraph (a) of the section, be made in a separate paper, and include the fee prescribed in § 2.6, at least one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the applicant stating that the mark is in use in commerce, and specifying the date of the applicant's first use of the mark in commerce and the goods or services on or in connection with which the mark is used in commerce. The proposed paragraph corresponds in principle to § 2.21, which sets forth minimum requirements for the filing of an application.

Section 2.76(f) is proposed to be added to provide that if an amendment to allege use is filed outside the time period specified in paragraph (a) of the proposed section, it will be returned to the applicant; that if the amendment is filed within the permitted time period but does not comply with all of the requirements of paragraph (e) of the section, applicant will be notified of the deficiency, which may be corrected

provided the mark has not yet been approved for publication or the six-month response period after issuance of a final action has not expired; and that if the deficiency is not corrected prior to approval of the mark for publication or prior to the expiration of the six-month response period after issuance of a final action, the amendment will not be examined.

Section 2.76(g) is proposed to be added to provide that if an amendment to allege use is acceptable, the applicant will be notified; and that the filing of such an amendment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

Section 2.76(h) is proposed to be added to provide that if, as a result of the examination of an amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons therefor and of any formal requirements or objections; and that the notification shall incorporate all unresolved objections or requirements previously stated.

Section 2.77, entitled "Amendments between notice of allowance and statement of use," is proposed to be added to provide that an application under section 1(b) of the Act may not be amended during the period between the date of mailing of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under proposed § 2.88, except to delete specified goods or services; and that other amendments filed during this period will not be considered unless resubmitted at, or after, the time of filing the statement of use. Amendments that are improperly submitted during this period will be stamped as "untimely filed—not considered" and placed in the application file.

The heading entitled "Publication and Allowance," for §§ 2.80 through 2.84, is proposed to be changed to "Publication and Post Publication." The proposed heading more accurately reflects the scope of the sections which follow. The word "allowance", as presently used in the heading, signifies approval of a mark for registration. The purpose of the proposed deletion is to prevent confusion between the word "allowance" and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.81 is proposed to be amended by changing the section title from "Allowance of application." to "Post publication."; redesignating the present paragraph as (a); revising redesignated paragraph (a), which

presently concerns the preparation of an application for registration after publication, to indicate that it does not apply to applications under section 1(b) of the Act for which no amendment to allege use under proposed § 2.76 has been submitted and accepted; and adding new paragraph (b) concerning the post-publication processing of applications under section 1(b) of the Act for which no amendment to allege use under proposed § 2.76 has been submitted and accepted. The word "allowance", as presently used in the section title, signifies approval of a mark for registration. The purpose of the proposed title change is to prevent confusion between this word and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.81(b) is proposed to be added to provide that, in an application under section 1(b) of the Act, for which no amendment to allege use under proposed § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue stating the serial number of the application, the name of the applicant, the correspondence address, the mark, the identification of goods or services, and the date of mailing of the notice of allowance; and that thereafter, the applicant shall submit a statement of use under proposed § 2.88. The proposed paragraph is in accordance with the provisions of section 13(b)(2) of the Act.

Section 2.82, which concerns the processing of an application for registration on the Supplemental Register after the examiner has approved the application for issuance, is proposed to be revised to clarify the language of the section.

Section 2.83, which concerns the processing of conflicting marks, is proposed to be amended by revising paragraph (a) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest filed mark," and by revising paragraph (b) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the application with the earliest date of execution." These provisions are proposed to be deleted because they do not conform to present practice.

Section 2.84, which concerns jurisdiction over published applications, is proposed to be amended by deleting the words "or allowed" from the section

title, which presently reads "Jurisdiction over published or allowed applications."; and revising paragraphs (a) and (b) to clarify the provisions thereof and to add provisions concerning jurisdiction over applications under section 1(b) of the Act which have been published. The words "allowed" and "allowance", as presently used in the section title and in paragraphs (a) and (b), signify approval of a mark for registration. The purpose of the proposed amendments to delete these words is to prevent confusion between the words "allowed" and "allowance" and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.86, which presently concerns applications with a plurality of goods or services comprised in a single class, is proposed to be amended by changing the section title from "Plurality of goods or services comprised in single class" to "Application may include multiple goods or services comprised in single class or multiple classes."; redesignating the present paragraph as (a); and adding new paragraphs (b) and (c).

Section 2.86(a), as redesignated, which presently provides that an application may recite a plurality of goods or services comprised in a single class provided the particular identification of goods or services is stated and the mark has actually been used in connection with all of the goods or services specified, is proposed to be revised to clarify the language of the paragraph and to add, as an alternative to the requirement of use, a requirement that the applicant have a bona fide intention to use the mark on or in connection with all the goods or services specified.

Section 2.86(b) is proposed to be added to incorporate in § 2.86 the provisions of the present § 2.87, which governs the filing of an application to register a mark for goods and/or services which fall within a plurality of classes; clarify the language of those provisions; and add certain requirements relating to multiple class applications under section 1(b) of the Act.

Section 2.86(c) is proposed to be added to prohibit applicants from alleging use as to certain goods or services and a bona fide intention to use as to other goods or services in the same application, regardless of the number of classes contained therein.

Section 2.87, which presently governs the filing of an application to register a mark for goods and/or services which fall within a plurality of classes, is proposed to be amended by changing the section title from "Combined

applications." to "Dividing an application."; redesignating the present paragraph as (a); revising redesignated paragraph (a); and adding new paragraphs (b) and (c), to govern the division of applications.

Section 2.87(a), as redesignated, is proposed to be revised by deleting the existing paragraph, which is incorporated in revised form in new paragraph (b) of proposed § 2.86, and adding the new provisions that an application may be physically divided into two or more separate applications upon submission by the applicant of a request therefor; that in the case of a request to divide out some, but not all, of the goods or services in a class, a fee for each new separate application to be created by the division must be submitted; and that any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

Section 2.87(b) is proposed to be added to provide that an application may be divided at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Board. The proposed paragraph provides further that an application under section 1(b) of the Act also may be divided upon request filed with a statement of use under proposed § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action. The date a mark is approved for publication is the date the approval is entered into the TRAM (Trademark Reporting and Monitoring) System. The date of approval for publication is immediately available to the public through TRAM.

Section 2.87(c) is proposed to be added to provide that a request to divide an application should be made in a separate paper from any other amendment or response in the application and should be entitled, at the top of the first page of the paper, as a "Request to divide application." Failure to make the request to divide in a separate paper or to title it as a "Request to divide application" will delay action on the request.

A new heading, entitled "Post Notice of Allowance," and two new sections thereunder, designated §§ 2.88 and 2.89, are proposed to be added to govern the

filing of statements of use, and requests for extensions of time, under section 1(d) of the Act, in applications under section 1(b) of the Act, after issuance of a notice of allowance under section 13(b)(2) of the Act.

Section 2.88, entitled "Filing of statement of use after notice of allowance," is proposed to be added to govern statements of use under section 1(d) of the Act in an application under section 1(b) of the Act.

Section 2.88(a) is proposed to be added to specify the time when such an amendment may be filed, namely, within six months after the date on which the notice of allowance under section 13(b)(2) of the Act with respect to a mark is mailed to an applicant under section 1(d)(2) of the Act; and that a statement of use filed prior to the date of mailing of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

Section 2.88(b) is proposed to be added to specify the elements of a complete statement of use under section 1(d) of the Act, namely, two specimens or facsimiles, conforming to the requirements of proposed §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; the fee prescribed in proposed § 2.6; and a verified statement by the applicant containing certain averments concerning applicant's ownership of the mark and use of the mark in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services.

Section 2.88(c) is proposed to be added to provide that a statement of use under section 1(d) of the Act may only be filed when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with proposed § 2.87 to divide out from the application the goods or services to which the statement of use pertains; and that if more than one item of goods or services is specified in the statement of use, the dates of use required in proposed paragraph (b)(1) of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated. The latter provision in the proposed paragraph is

in conformity with both present and proposed § 2.33(a)(2).

Section 2.88(d) is proposed to be added to provide that a statement of use must be made in a separate paper from any other amendment or response in the application and should be entitled, at the top of the first page of the paper, "Statement of use under § 2.88." If the statement of use is not made in a separate paper it will not be considered and the fee will be refunded.

Section 2.88(e) is proposed to be added to specify minimum filing requirements for a statement of use, namely, that the statement be filed within the time period specified in proposed paragraph (a) of the section, be made in a separate paper, and include the fee prescribed in proposed § 2.6, at least one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the applicant stating that the mark is in use in commerce, and specifying the date of the applicant's first use of the mark in commerce and the goods or services on or in connection with which the mark is used in commerce. The proposed paragraph corresponds in principle to proposed § 2.21, which sets forth minimum requirements for the filing of an application.

Section 2.88(f) is proposed to be added to provide that if the statement of use does not comply with all of the requirements of paragraph (e) of this section, applicant will be notified of the deficiency; that if the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency; and that after the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use.

Section 2.88(g) is proposed to be added to provide that if the statement of use is filed within a permitted period of time after the date of mailing of the notice of allowance under section 13(b)(2) of the Act and complies with all of the requirements of paragraph (e) of this section, it will be examined in accordance with proposed §§ 2.61 through 2.69; that if, as a result of the examination of the statement of use, applicant is found not entitled to registration, applicant will be so notified and advised of the reasons and of any formal requirements or objections; and that if the statement of use is acceptable in all respects, the applicant will be notified of its acceptance.

Section 2.88(h) is proposed to be added to provide that a statement of use that includes all of the elements specified in paragraph (e) of the section

may be amended in accordance with proposed §§ 2.59 and 2.71 through 2.75. The proposed paragraph is in accordance with section 1(d)(3) of the Act, which specifically provides that the applicant may amend the statement of use.

Section 2.88(i)(1) is proposed to be added to provide that the goods or services specified in a statement of use must conform to those goods or services identified in the notice of allowance; and that if appropriate, an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or "those goods or services identified in the notice of allowance except * * * " followed by an identification of the goods or services to be deleted. The proposed requirement that the goods or services specified in the statement of use must conform to those goods or services identified in the notice of allowance is in accordance with section 1(d)(1) of the Act. The proposed format for specifying goods or services in the statement of use will prevent inadvertent errors in the applicant's recital of the goods or services and facilitate examination of statements of use by the PTO.

Section 2.88(i)(2) is proposed to be added to provide that if any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Trademark Examining Attorney shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services. The proposed paragraph is in accordance with section 1(d)(3) of the Act, which specifically provides that the applicant may amend the statement of use.

Section 2.88(i)(3) is proposed to be added to provide that the statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with proposed § 2.71(b). The proposed paragraph is in conformance with proposed § 2.77, which provides that an application under section 1(b) of the Act may not be amended during the period between issuance of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use, except to delete specified goods or services; and that other amendments filed during this period will not be considered unless resubmitted at, or after, the time of filing the statement of use.

Section 2.88(j) is proposed to be added to provide that the mark shown in the

specimens submitted with the statement of use must be materially the same as the mark depicted in the drawing of record. Concerning material alteration of a mark see *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ 2d 1483 (Fed. Cir. 1986); *In re Holland American Wafer Co.*, 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984); *United Rum Merchants, Ltd. v. Distillers Corp. (S.A.) Ltd.*, 9 USPQ 2d 1481 (TTAB 1988); *Visa International Service Assn. v. Life-Code Systems, Inc.*, 220 USPQ 740 (TTAB 1983).

Section 2.88(k) is proposed to be added to provide that the statement of use may be accompanied by a separate request to amend the drawing in the application in accordance with proposed §§ 2.51 and 2.72.

Section 2.88(l) is proposed to be added to provide that the failure to timely file a statement of use which includes all of the elements specified in paragraph (e) of the section, after the date of mailing of a notice of allowance under section 13(b)(2) of the Act shall result in the abandonment of the application. The proposed paragraph is in conformity with section 1(d)(4) of the Act.

Section 2.89, entitled "Extensions of time for filing a statement of use.", is proposed to be added to govern the filing and examination of requests for extensions of time for filing statements of use under proposed § 2.88.

Section 2.89(a) is proposed to be added to provide that an applicant may request a six-month extension of time to file the statement of use under proposed § 2.88 by submitting a written request, before the expiration of the six-month period following the date of mailing of a notice of allowance under section 13(b)(2) of the Act, accompanied by the fee prescribed in proposed § 2.6 and a verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. The proposed paragraph is in conformity with section 1(d)(2) of the Act.

Section 2.89(b) is proposed to be added to provide that an applicant may request further six-month extensions of time for filing the statement of use by submitting a written request, prior to the expiration of a previously granted extension of time, accompanied by the fee prescribed in proposed § 2.6; a verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services

identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce; and a showing of good cause, as specified in proposed section (d) of this paragraph.

Section 2.89(c) is proposed to be added to provide that extensions of time, for good cause, under proposed § 2.89(b) will be granted only in six-month increments and may not aggregate more than 24 months. The proposed provision is in conformity with section 1(d)(2) of the Act.

Section 2.89(d) is proposed to be added to provide that the showing of good cause which is required as part of a request for an extension of time under proposed § 2.89(b) must include certain specified elements listed in proposed paragraphs (d)(1) and (d)(2).

Section 2.89(d)(1) is proposed to be added to require that the showing of good cause which is required as part of a request for an extension of time under proposed § 2.89(b) must include, in part, an allegation that the applicant has not yet made use of the mark in commerce on all the goods or services specified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce.

Section 2.89(d)(2) is proposed to be added to require that the showing of good cause which is required as part of a request for an extension of time under proposed § 2.89(b) must include, in part, a statement of facts demonstrating ongoing efforts to make use of the mark in commerce on or in connection with each of the goods or services specified in the verified statement of continued bona fide intention to use required under proposed § 2.89(b); that the efforts may include, without limitation, product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain required governmental approval, or other similar activities; and that, in the alternative, a satisfactory explanation for the failure to make such efforts must be submitted. The paragraph is proposed in compliance with section 1(d)(2) of the Act, which requires the Commissioner to issue regulations setting forth what constitutes good cause for a request for an extension of time for filing a statement of use under section 1(d)(2) of the Act. The listing in the paragraph of examples of efforts to make use of the mark in commerce is intended to be illustrative rather than exhaustive. The inclusion in the examples of "steps to obtain required governmental approval" is not intended

to imply that any use of a mark prior to such approval may not constitute "use in commerce" as that term is defined in section 45 of the Act.

Section 2.89(e)(1) is proposed to be added to provide that at the time of the filing of a statement of use, or during any time remaining in the existing period for filing a statement of use, the applicant may file one request, in accordance with paragraph (a) or (b) of the section, for a six-month extension of time for filing a statement of use, provided that the time requested would not extend beyond 36 months from the date of mailing of the notice of allowance; and that, thereafter, applicant may not request any further extension of time. This proposed paragraph permits an applicant to obtain additional time to submit a substitute statement of use in case the original statement of use is rejected, as fatally defective, by the PTO near or after the expiration of the six-month period in which such original statement was filed.

Section 2.89(e)(2) is proposed to be added to provide that, in lieu of the allegations required for a showing of good cause under paragraph (d) of the section, applicant may show good cause in a request filed pursuant to paragraph (e)(1) of the section by asserting that applicant believes that it has made valid use of the mark in commerce, as evidenced by the submitted statement of use, but that if the statement of use is found by the PTO to be fatally defective, applicant will need additional time in which to file a new statement of use. The proposed paragraph clarifies how an applicant may show good cause in such a situation.

Section 2.89(f) is proposed to be added to provide that the goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance. The proposed requirement is in accordance with section 1(d)(2) of the Act. The proposed paragraph also provides that any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinscribed in the application. Finally, the proposed paragraph provides that, if appropriate, an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or "those goods or services identified in the notice of allowance except * * *" followed by a

list of the goods or services to be deleted. The proposed format will prevent inadvertent errors in the applicant's recital of the goods or services and facilitate examination of such a request by the PTO.

Section 2.89(g) is proposed to be added to provide that the applicant will be notified of the grant or denial of a request for an extension of time; that failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under proposed § 2.88; that if, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time; that otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Commissioner in accordance with proposed § 2.66 or § 2.140; and that a petition from the denial of a request for an extension of time to file a statement of use shall be filed within one month from the date of mailing of the denial of the request. The proposed paragraph parallels proposed §§ 2.163 through 2.165, concerning affidavits and declarations under Section 8 of the Act, except that the proposed paragraph does not permit a request for reconsideration, but rather provides a petition to the Commissioner as the only recourse after a denial of a request for an extension of time.

Section 2.99(g), which presently lists the types of applications and registrations that are not subject to concurrent use registration proceedings, is proposed to be revised to provide, additionally, that applications to register under section 1(b) of the Act are subject to concurrent use registration proceedings only after an acceptable amendment to allege use under proposed § 2.76 or statement of use under proposed § 2.88 has been filed.

Section 2.99(h) is proposed to be added to provide that the Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding. The proposed amendment parallels a proposed amendment to add § 2.133(c) to provide that geographic limitations will be considered and determined only in the context of a concurrent use registration proceeding.

Section 2.101(b), which pertains to the filing of an opposition, is proposed to be amended to be gender neutral, and to specify that an opposition need not be verified and may be signed by the

opposer or the opposer's attorney or other authorized representative. The proposed amendment parallels a proposed amendment to § 2.111(b) relating to petitions to cancel. At one time, sections 13, 14 and 24 of the Act required verification for oppositions, petitions to cancel registrations on the Principal Register, and petitions to cancel registrations on the Supplemental Register, respectively. The verification requirement was deleted from sections 13 and 14 of the Act by Pub. L. 97-247, enacted August 27, 1982. Through inadvertence, a provision deleting, from Section 24 of the Act, the verification requirement for petitions to cancel registrations on the Supplemental Register was omitted from Pub. L. 97-247. The omitted provision was incorporated, however, in Pub. L. 100-667. Accordingly, it is now appropriate to amend §§ 2.101(b) and 2.111(b) to indicate that verification is not necessary.

Section 2.111(b), which pertains to the filing of a petition for cancellation, is proposed to be amended to be gender neutral, and to specify that a petition to cancel need not be verified and may be signed by the petitioner or the petitioner's attorney or other authorized representative. This proposed amendment parallels a proposed amendment to § 2.101(b) relating to oppositions. The section is proposed to be amended further to indicate that a petition may seek to cancel a registration in whole or in part. It has been the practice of the Board to entertain a petition which seeks to "partially cancel" a registration by restricting the identification of goods or services therein. See *Alberto-Culver Co. v. F.D.C. Wholesale Corp.*, 3 USPQ 2d 1460 (TTAB 1987), and *U.S. Steel Corp. v. National Copper & Smelting Co.*, 131 USPQ 397 (TTAB 1961). Cf. *Stanspec Co. v. American Chain & Cable Co., Inc.*, 531 F.2d 563, 566 n.9, 189 USPQ 420, 423 n.9 (CCPA 1976), and *Pegasus Petroleum Corp. v. Mobil Oil Corp.*, 227 USPQ 1040, 1043-1044 (TTAB 1985). However, there has been some question as to the Board's authority, under Section 18 of the Act, to "partially cancel" a registration in a cancellation proceeding. See *Selfway, Inc. v. Travelers Petroleum, Inc.*, 579 F.2d 75, 198 USPQ 271 (CCPA 1978). Section 118 of Pub. L. 100-667 resolves this question by amending Section 18 of the Act (Which specifies the actions that the Board, acting on behalf of the Commissioner, may take in inter partes proceedings) to provide that the Board may, *inter alia*, "cancel the registration, in whole or in part," "modify the application or

registration by limiting the goods or services specified therein," and "otherwise restrict or rectify with respect to the register the registration of a registered mark." Accordingly, § 2.111(b) is proposed to be amended to indicate the availability of a petition for "partial cancellation."

Section 2.129(d) is proposed to be added to provide that when a party to an inter partes proceeding before the Trademark Trial and Appeal Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Board will enter a declaratory judgment in favor of that party, subject to the party's establishment of constructive use; and that the time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the entry of the declaratory judgment. The proposed provisions are in accordance with sections 18 and 21 of the Act. There is a question, however, as to whether an Article III court has jurisdiction to decide an appeal from a declaratory judgment of the Board. Comments concerning this issue are invited.

Section 2.133, which governs the amendment of an application or registration involved in an inter partes proceeding before the Board, is proposed to be amended to redesignate and republish the present paragraph as (a) and to add new paragraphs, designated (b), (c), and (d), to reflect the expanded authority granted to the Board under Section 18 of the Act, as amended. At present, the Board, in determining an inter partes proceeding other than a concurrent use registration proceeding, is bound to determine the proceeding based on the defendant's application or registration as presented, including the identification of goods or services specified therein, and cannot consider restrictions or limitations to defendant's use (such as restrictions or limitations as to types of goods, trade channels, or classes of purchasers) which may exist although not incorporated in the identification of goods or services in the application or registration. See, for example, *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *CTS Corp. v. Cronstons Manufacturing, Inc.*, 515 F.2d 780, 185 USPQ 773 (CCPA 1975); USTA Trademark Review Commission, *Report and Recommendations on the United States Trademark System and the Lanham Act*, 77 TMR 375, 452-453 (1987); and Daniel L. Skoler, *Trademark Identification—Much Ado About Something?*, 76 TMR 224, 237-239 (1986).

As a result, the Board must often decide, for example, the issue of likelihood of confusion on a hypothetical rather than "real world" basis. Section 118 of Pub. L. 100-667 remedies this situation by amending section 18 of the Act to confer upon the Board (acting on behalf of the Commissioner) the authority to "cancel the registration in whole or in part," "modify the application by limiting the goods or services specified therein," and "otherwise restrict or rectify with respect to the register the registration of a registered mark."

Section 2.133(b) is proposed to be added to provide that if, in an inter partes proceeding, the Board finds that a defendant is not entitled to registration in the absence of a specified restriction to the defendant's involved application or registration, the Board will allow the defendant time in which to amend the application or registration to conform to the findings of the Board, failing which judgment will be entered against the defendant.

Section 2.133(c) is proposed to be added to provide that geographic limitations will be considered and determined by the Board only in the context of a concurrent use registration proceeding. The proposed amendment parallels a proposed amendment to add § 2.99(h) to provide that the Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding.

Section 2.133(d) is proposed to be added to provide that a plaintiff's pleaded registration will not be restricted in the absence of a counterclaim or another proceeding between the same parties or their privies to cancel the registration in whole or in part.

Section 2.161, which concerns the cancellation of a registration for failure to file an affidavit or declaration during the sixth year of the registration pursuant to Section 8 of the Act, is proposed to be revised to clarify the language of the section and to implement the provisions of Section 110 of Pub. L. 100-667. Section 8(a) of the Act presently requires, *inter alia*, that the registrant file in the PTO an affidavit "showing that said mark is in use in commerce, or showing that its nonuse is due to special circumstances * * *". Section 110 of Pub. L. 100-667 amends Section 8(a) of the Act to require, *inter alia*, that the registrant file in the PTO an affidavit "setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, or

showing that any nonuse is due to special circumstances * * *

Section 2.162, which concerns requirements for the affidavit or declaration which must be filed during the sixth year of a registration pursuant to section 8 of the Act, is proposed to be amended by revising paragraphs (e) and (g) to implement the above-specified provisions of Section 110 of Pub. L. 100-667, and by revising paragraph (f) to clarify the language of the paragraph.

Section 2.181, which concerns the terms of original registrations and renewals, is proposed to be amended by redesignating present paragraph (a) as (a)(1), revising redesignated paragraph (a)(1), and adding new paragraph (a)(2) to implement the provisions of sections 110 and 111 of Pub. L. 100-667. Section 110 of Pub. L. 100-667 amends section 8(a) of the Act to reduce the term of a registration from twenty years to ten years, and section 111 of Pub. L. 100-667 amends section 9(a) of the Act to reduce the term of a renewal from twenty years to ten years.

Section 2.181(a)(1), as redesignated, is proposed to be revised to indicate that registrations issued under the Act which were in force on November 15, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or renewal, and may be renewed for periods of ten (rather than twenty) years from the expiring period unless previously cancelled or surrendered.

Section 2.181(a)(2) is proposed to be added to indicate that registrations issued under the Act on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered. The proposed paragraph is in conformity with section 51 of the Act, added by section 135 of Pub. L. 100-667.

Section 2.185, which concerns requirements for assignments, is proposed to be amended by redesignating paragraph (a)(1) as (a)(1)(i), revising redesignated paragraph (a)(1)(i), and adding new paragraph (a)(1)(ii) to liberalize certain requirements for the recordation in the PTO of assignments.

Section 2.185(a)(1)(i), as redesignated, which presently permits recordation of an assignment of a registration, if, *inter alia*, the certificate of registration is identified in the assignment document by the certificate number and the date of registration, is proposed to be revised to permit recordation if, in the alternative, the mark which is the subject of the registration and the goods to which the

registration pertains are identified in the assignment document (or the assignment is of all registrations owned by the assignor), and the certificate number is identified in a transmittal letter or attachment which is not incorporated in the assignment document, in which case such letter or attachment shall become part of the record of the assignment in the PTO. The redesignated paragraph is proposed to be further amended by transferring a parallel provision relating to applications to proposed new paragraph (a)(1)(ii) and revising it similarly. Proposed new paragraph (a)(1)(ii) also includes a provision that if an assignment is executed concurrently with or subsequent to the execution of an application but before the application is filed or before its serial number and filing date are ascertained, it should adequately identify the application by its date of execution, name of the applicant, mark, and goods or services; so that there can be no mistake as to the application intended. The proposed provision parallels a corresponding provision in § 1.331 concerning assignments of patent applications.

Section 2.187 presently provides that a certificate of registration will be issued to the assignee of an applicant, or in a new name of applicant, provided that an appropriate document is of record in the Assignment Division of the PTO no later than the time the notice of publication is mailed, or if such document is not of record, then if a statement that such document has been filed for recordation is in the application file by the time the application is being prepared for issuance of the certificate of registration; and that the address of the assignee must be made of record in the application file or in the recorded document. The paragraph is proposed to be revised to provide that a certificate of registration will be issued to an assignee of an applicant, or in a new name of an applicant, provided that such party makes a written request therefor in the application record by the time the application is being prepared for issuance of the certificate of registration, and the appropriate document is of record in the Assignment Division of the PTO, or if the assignment or name change document is not of record in the Assignment Division, the written request must state that such document has been filed for recordation. The purpose of the proposed revision is to permit an assignee or an applicant whose name has been changed to ensure, by complying with the requirements of the proposed paragraph, that the certificate of registration will be issued in the name of such party. The paragraph is proposed to be revised further to

provide that the address of the assignee must be made of record in both the application file and the recorded document. This proposed revision will help to ensure that the certificate of registration, and any subsequent papers which the PTO may need to send to the owner of the registration, will be mailed to the proper address.

Environmental, Energy, and Other Considerations

The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) because the rule change includes no additional or increased fees for existing filings. Pub. L. 100-667 creates a new statutory right to file an application based upon a bona fide intention to use a mark in commerce ("intent-to-use"). The proposed rule change includes fees for intent-to-use applications. However, filing an intent-to-use application under the new law is permissive. Such a filing will reduce the substantial burden of securing and protecting trademark rights by enabling small entities to obtain trademark rights prior to the use of a mark and the expending of funds in relation thereto. Thus, substantive rights to use valuable trademarks are not adversely affected and, in some instances, can be established prior to the expenditure of large amounts of funds.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12812.

The rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. in relation to any existing filings. However, Pub. L. 100-667 creates a new additional basis for filing an application, as well as certain other new filings in relation thereto, namely, an amendment to allege use under section 1(c) of the Act, a statement of use under section 1(d) of the Act, and requests for extensions of time, under section 1(d) of the Act, to file a statement of use. The public reporting burden for these new collections of information is estimated to vary from .25 hours to .50 hours per filing, with an average of .35 hours per filing, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to the Commissioner of Patents and Trademarks, Office of Management and Organization, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Project 0651-XXXX.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the Patent and Trademark Office proposes to amend Parts 1 and 2 of Title 37 of the Code of Federal Regulations by amending or revising §§ 1.1, 1.8, 2.6, 2.18, 2.21, 2.24, 2.31, 2.33, 2.38, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.52, 2.53, 2.56, 2.57, 2.58, 2.61, 2.64, 2.65, 2.66, 2.69, 2.71, 2.72, 2.73, 2.75, 2.81, 2.82, 2.83, 2.84, 2.86, 2.87, 2.99, 2.101, 2.111, 2.129, 2.133, 2.161, 2.162, 2.181, 2.185 and 2.187; adding §§ 2.2, 2.59, 2.76, 2.77, 2.88 and 2.89; revising the undesignated center heading for §§ 2.80 through 2.84; and adding an undesignated center heading for added §§ 2.88 and 2.89, as set forth

below. Additions are indicated by arrows (►) and deletions by brackets ([]).

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for Part 1 will continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.1 is proposed to be amended by adding new paragraph (h) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

► (h) In applications under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), all statements of use filed under section 1(d) of the Act, requests for extensions of time therefor, and amendments to allege use under section 1(c) of the Act should be additionally marked "Box ITU." ◀

3. Section 1.8 is proposed to be amended by adding new paragraphs (a)(2)(xiv) through (a)(2)(xvi) to read as follows:

§ 1.8 Certificate of mailing.

- (a) * * *
- (2) * * *

► (xiv) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of a statement of use under § 2.88 (15 U.S.C. 1051(d)).

(xv) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of a request, under § 2.89 (15 U.S.C. 1051(d)), for an extension of time to file a statement of use under § 2.88 (15 U.S.C. 1051(d)).

(xvi) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of an amendment to allege use in commerce under § 2.76 (15 U.S.C. 1051(c)). ◀

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

4. The authority citation for Part 2 will continue to read as follows:

Authority: 35 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

5. Section 2.2 is proposed to be added to read as follows:

► § 2.2 Definitions.

(a) "The Act" as used in this Part means the Trademark Act of 1946, 60 Stat. 427, as amended, codified in 15 U.S.C. 1051 et. seq.

(b) "Entity" as used in this Part includes both natural and juristic persons. ◀

6. Section 2.6 is proposed to be amended by adding new paragraphs (x) and (y) to read as follows:¹

§ 2.6 Trademark fees.

- (x) For filing an amendment to allege use under section 1(c) of the Act or a statement of use under section 1(d)(1) of the Act, per class..... 100.00
- (y) For filing a request under section 2(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(c)(1) of the Act, per class..... 100.00 ◀

7. Section 2.18 is proposed to be revised to read as follows:

§ 2.18 Correspondence, with whom held.

Correspondence will be sent to the applicant or a party to a proceeding at ► its ◀ [his] address unless papers are transmitted by an attorney at law, or a written power of attorney is filed, or written authorization of other person entitled to be recognized is filed, or the applicant or party designates in writing another address to which correspondence is to be sent, in which event correspondence will be sent to the attorney at law transmitting the papers, or to the attorney at law designated in the power of attorney, or to the other person designated in the written authorization, or to the address designated by the applicant or party for correspondence. Correspondence will continue to be sent to such address until the applicant or party, or the attorney at law or other authorized representative of the applicant or party, indicates in writing that correspondence is to be sent to another address. ► Correspondence will be sent to the domestic representative of a foreign applicant unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event correspondence will be sent to the attorney at law or other qualified person duly authorized. ◀ Double correspondence will not be undertaken by the Patent and Trademark Office, and if more than one attorney at law or other authorized representative appears or signs a paper, the Office reply thereto will be sent to the address already established in the file until another correspondence

¹ In a notice of proposed rulemaking to be published at a later date in the Federal Register, § 2.6 is proposed to be amended by adding new paragraphs (u), (v) and (w) concerning fees for public access to the trademark automated search system.

address is specified by the applicant or party or by the attorney or other authorized representative of the applicant or party.

8. Section 2.21 is proposed to be amended by revising paragraphs (a)(5) and (a)(6), and adding new paragraphs (a)(5)(i), (a)(5)(ii), (a)(5)(iii), and (a)(5)(iv) to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) * * *

(5) [At least one specimen or facsimile of the mark as actually used:]
▶ A basis for filing:

(i) A date of first use of the mark in commerce, and at least one specimen or facsimile of the mark as used, in an application under section 1(a) of the Act, or

(ii) A claim of a bona fide intention to use the mark in commerce and a certification or certified copy of the foreign registration on which the application is based in an application under section 44(e) of the Act, or

(iii) A claim of a bona fide intention to use the mark in commerce and a claim of the benefit of a prior foreign application in an application filed in accordance with section 44(d) of the Act, or

(iv) A claim of a bona fide intention to use the mark in commerce in an application under section 1(b) of the Act; ◀

(6) ▶ A verification or declaration in accordance with § 2.33(b) signed by the applicant; ◀ [A date of first use of the mark in commerce, or a certification or certified copy of a foreign registration if the application is based on such foreign registration pursuant to section 44(e) of the Trademark Act, or a claim of the benefit of a prior foreign application in accordance with section 44(d) of the Act;]

9. Section 2.24 is proposed to be revised to read as follows:

§ 2.24 Designation of representative by foreign applicant.

If ▶ an ◀ [the] applicant is not domiciled in the United States, ▶ the applicant ◀ [he] must designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If this document does not accompany or form part of the application, it will be required and registration refused unless it is supplied. Official communications of the Patent and Trademark Office will be addressed

to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized ▶, in which event Official communications will be sent to the attorney at law or other qualified person duly authorized ◀. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under [§ 2.12(a), or qualified under] paragraph ▶ (a), ◀ (b) or (c) of ▶ § 10.14 of this subchapter ◀ [§ 2.12] and authorized under § 2.17(b).

10. Section 2.31 is proposed to be revised to read as follows:

§ 2.31 Application must be in English.

The application must be in the English language and plainly written on but one side of the paper. It is [deemed] preferable that the application be on [legal or] lettersize ▶ (i.e., 8½ inches by 11 inches) ◀ paper, typewritten double spaced, with at least a one and one-half inch (3.8 cm.) margin on the left-hand side and top of the page.

11. Section 2.33 is proposed to be amended by revising the section title, revising paragraphs (a)(1)(ii), (a)(1)(iv), (a)(1)(v), (a)(1)(vi), (a)(1)(vii), (a)(1)(viii), and (c), redesignating paragraph (a)(1)(ix) as (a)(1)(x), revising redesignated paragraph (a)(1)(x), adding a new paragraph (a)(1)(ix), revising paragraph (a)(2), redesignating present paragraph (b) as (b)(1), revising redesignated (b)(1), and adding new paragraphs (b)(2) and (d) to read as follows:

§ 2.33 Requirements for ▶ written ◀ application.

(a)(1) * * *

(ii) The citizenship of the applicant; if the applicant ▶ is ◀ [be] a partnership, ▶ the state or nation under the laws of which the partnership is organized and ◀ the names and citizenship of the general partners or, if the applicant ▶ is ◀ [be] a corporation or association, the state or nation under the laws of which ▶ the corporation or association is ◀ organized;

(iv) ▶ In an application under section 1(a) of the Act, that ◀ [That] the applicant has adopted and is using the mark shown in the accompanying drawing [;] ▶, or, in an application under section 1(b) or 44 of the Act, that the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce; ◀

(v) ▶ In an application under section 1(a) of the Act, the ◀ [The] particular goods ▶ or services ◀ on or in connection with which the mark is

used [;] ▶ or, in an application under section 1(b) or 44 of the Act, the particular goods or services on or in connection with which the applicant has a bona fide intention to use the mark, which in an application under section 44 may not exceed the scope of the goods or services covered by the foreign application or registration; ◀

(vi) The class of ▶ goods or services ◀ [merchandise] according to the official classification, if known to the applicant;

(vii) ▶ In an application under section 1(a) of the Act, the ◀ [The] date of applicant's first use of the mark as a trademark ▶ or service mark ◀ on or in connection with goods ▶ or services ◀ specified in the application [see § 2.38]; ▶ and the date of applicant's first use in commerce of the mark as a trademark or service mark on or in connection with goods or services specified in the application, specifying the nature of such commerce (see § 2.38); ◀

(viii) ▶ In an application under section 44(e) of the Act for registration of a mark duly registered in the applicant's country of origin, as that term is defined in section 44(c), accompanying the application, a certificate of the trademark office of the applicant's country of origin showing that the mark has been registered in such country and also showing the mark, the goods or services for which the mark is registered, the date of filing of the application on the basis of which registration was granted and that said registration is in full force and effect and, if the certificate is not in the English language, a translation thereof; ◀ [The date of applicant's first use in commerce of the mark as a trademark on or in connection with goods specified in the application, specifying the nature of such commerce (see § 2.38);]

(ix) ▶ In an application claiming the benefit of a foreign application in accordance with section 44(d) of the Act, compliance with the requirements of § 2.39; ◀ [The mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods specified.]

▶ (x) In an application under section 1(a) of the Act, the mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified or, in an application under section 1(b) of the Act, the intended mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified. ◀

(2) If more than one item of goods or services is specified in the application, the dates of use required in paragraph[s] (a)(1) (vii) [and (viii)] of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated.

(b) (1) In an application under section 1(a) of the Act, the [The] application must [also] include averments to the effect that the applicant is believed [or other person making the verification or declaration in accordance with § 2.20 believes himself or the firm, corporation, or association in whose behalf he makes the verification or declaration in accordance with § 2.20] to be the owner of the mark sought to be registered; that the mark is in use in commerce, specifying the nature of such commerce; that no other entity [person, firm, corporation, or association,] to the best of the declarant's [his] knowledge and belief, has the right to use such mark in commerce, either in the identical form [thereof] or in such near resemblance [thereto] as to be likely, when applied to the goods or services of such other entity, to cause confusion, or to cause mistake, or to deceive; that the specimens or facsimiles show the mark as [actually] used on or in connection with the goods [;] or services; and that the facts set forth in the application are true [.] or:

(2) In an application under section 1(b) or 44 of the Act, the application must [also] include averments to the effect that the applicant is believed to be the owner of the mark sought to be registered; that the applicant has a bona fide intention to use the mark in commerce on or in connection with the specified goods or services; that no other entity, to the best of the declarant's knowledge and belief, has the right to use such mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other entity, to cause confusion, or to cause mistake, or to deceive; and that the facts set forth in the application are true.

(c) For an application for the registration of a mark for goods or services falling within multiple [a plurality of] classes, see § 2.86 [§ 2.87].

(d) An applicant may not file under both sections 1(a) and 1(b) of the Act in a single application, nor may an applicant in an application under section 1(a) of the Act amend that

application to seek registration under section 1(b) of the Act.

12. Section 2.38 is proposed to be revised to read as follows:

§ 2.38 Use by predecessor or by related companies.

(a) If the first use, the date of which is required by paragraph [s] (a)(1)(vii) [or (viii)] of § 2.33, was by a predecessor in title, or by a related company (sections 5 and 45 of the Act), and such use inures to the benefit of the applicant, the date of such first use may be asserted with a statement that such first use was by the predecessor in title or by the related company as the case may be.

13. Section 2.39 is proposed to be revised to read as follows:

§ 2.39 Priority claim based on foreign application. [Omission of allegation of use in commerce by foreign applicants.]

(a) An application claiming the benefit of a foreign application in accordance with section 44(d) of the Act shall conform to the requirements for a written application specified in § 2.33 of this part. [The allegation that the mark is in use in commerce, required by § 2.33(b), and the statements of the dates of applicant's first use, required by § 2.33(a)(1) (vii) and (viii), may be omitted in the case of an application filed pursuant to section 44(e) of the Act for registration of a mark duly registered in the country of origin of a foreign applicant, provided the application when filed is accompanied by a certificate of the trademark office of the foreign country showing that the mark has been registered in the country of origin of the applicant and also showing the mark, the goods for which registered and that said registration is then in full force and effect. If the certificate is not in the English language, a translation is required.]

(b) In addition, the application shall specify the filing date and country of the first regularly filed foreign application or, if the application is based upon a subsequent regularly filed application in the same foreign country, the application shall so state and shall show that any prior filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority. [Such allegations and statements may also be omitted in the case of an application claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act. The application in such

case shall state the date and country of the first foreign application and, before the application can be considered as allowable, there must be filed a certificate of the trademark office of the foreign country showing that the mark has been registered in the country of origin of the applicant and also showing the mark, the goods for which registered and the date of filing of the application. In such cases the identification of goods shall not exceed the scope of that covered by the foreign registration or application. In the event the application is based upon a subsequent regularly filed application in the same foreign country the application must so state and must show that any prior filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.]

(c) Before the application can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act must be established. The Patent and Trademark Office will presume that the basis for registration will be, under section 44(e), the foreign registration issuing from the foreign application underlying the section 44(d) claim of priority, unless a paper which claims a different basis for registration is filed in the application within six months of the filing date of the foreign application. Assertion of a different basis for registration, including reliance on a different foreign registration under section 44(e), more than six months after the filing date of the foreign application will result in a loss of priority under section 44(d).

14. Section 2.41 is proposed to be revised to read as follows:

§ 2.41 Proof of distinctiveness under section 2(f).

(a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the Act but which is said by applicant to have become distinctive in commerce of the goods or services set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, or declarations in accordance with § 2.20, depositions, or other appropriate evidence showing duration, extent and nature of use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, or declarations in accordance with § 2.20,

letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods.

(b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness. Also, if the mark is said to have become distinctive of applicant's goods by reason of substantially exclusive and continuous use in commerce thereof by applicant for the five years before the date on which the claim of distinctiveness is made, [next preceding the application filing date,] a showing by way of statements which are verified or which include declarations in accordance with § 2.20, in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. In each of these situations, however, further evidence may be required.

15. Section 2.44 is proposed to be revised to read as follows:

§ 2.44 Collective mark.

(a) In an application to register a collective mark [.] under section 1(a) of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark.

(b) In an application to register a collective mark under section 1(b) or 44 of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons intended to be entitled to use the mark, indicating what their relationship to the applicant will be, and the nature of the control applicant intends to exercise over the use of the mark.

16. Section 2.45 is proposed to be revised to read as follows:

§ 2.45 Certification mark.

(a) In an application to register a certification mark [.] under section 1(a) of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall, in addition, specify the manner in which and the conditions under which the certification mark is used; it shall allege that the applicant exercises legitimate control over the use of the mark and that the applicant [he] is not

[himself] engaged in the production or marketing of the goods or services to which the mark is applied.

(b) In an application to register a certification mark under section 1(b) or 44 of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall, in addition, specify the manner in which and the conditions under which the certification mark is intended to be used; it shall allege that the applicant intends to exercise legitimate control over the use of the mark and that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied.

17. Section 2.47 is proposed to be revised to read as follows:

§ 2.47 Supplemental Register.

(a) In an application to register on the Supplemental Register [.] under section 23 of the Act, the application shall so indicate and shall specify that the mark has been in lawful use in commerce, specifying the nature of such commerce, by the applicant

[for the preceding year, if the application is based on such use. When an applicant requests registration without a full year's use of the mark, in accordance with the last paragraph of section 23 of the Act, the showing required must be separate from the application.]

(b) In an application to register on the Supplemental Register under section 44 of the Act, the application shall so indicate. The statement of lawful use in commerce may be omitted.

(c) A mark in an application to register on the Principal Register under section 1(b) of the Act is eligible for registration on the Supplemental Register only after an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been timely filed.

(d) An application for registration on the Supplemental Register must conform to the requirements for registration on the Principal Register under section 1(a) of the Act, so far as applicable.

18. Section 2.51 is proposed to be revised to read as follows:

§ 2.51 Drawing required.

(1) In an application under section 1(a) of the Act, the [The] drawing of the trademark shall be a substantially exact representation of the mark [thereof] as [actually] used on or in connection with the goods [.] ; or

(2) In an application under section 1(b) of the Act, the drawing of the trademark shall be a substantially exact

representation of the mark as intended to be used on or in connection with the goods specified in the application, and once an amendment to allege use under § 2.76 or a statement of use under § 2.88 has been filed, the drawing of the trademark shall be a substantially exact representation of the mark as used on or in connection with the goods; or

(3) In an application under section 44 of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of the applicant.

(b) (1) In an application under section 1(a) of the Act, the [The] drawing of a service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services [.] The drawing of a service mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description [.] ; or

(2) In an application under section 1(b) of the Act, the drawing of a service mark shall be a substantially exact representation of the mark as intended to be used in the sale or advertising of the services specified in the application and, once an amendment to allege use under § 2.76 or a statement of use under § 2.88 has been filed, the drawing of the service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services; or

(3) In an application under section 44 of the Act, the drawing of a service mark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of applicant.

(c) The drawing of a mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description of the mark. [In the case of an application for registration on the Supplemental Register, the drawing, when appropriate and necessary (section 23, third paragraph, of the Act), may be the drawing of a package or configuration of goods.]

(d) Broken lines should be used in the drawing of a mark to show placement of the mark on the goods, or on packaging therefor, or to show matter not claimed as part of the mark, or both, as appropriate. In an application to register a mark with three-dimensional features, the drawing shall depict the

mark in perspective in a single rendition thereof.

(e) ◀ If the application is for the registration of only a word, letter or numeral, or any combination thereof, not depicted in special form, the drawing may be the mark typed in capital letters on paper, otherwise complying with the requirements of § 2.52.

19. Section 2.52 is proposed to be amended by revising paragraphs (a), (d) and (e) to read as follows:

§ 2.52 Requirements for drawings.

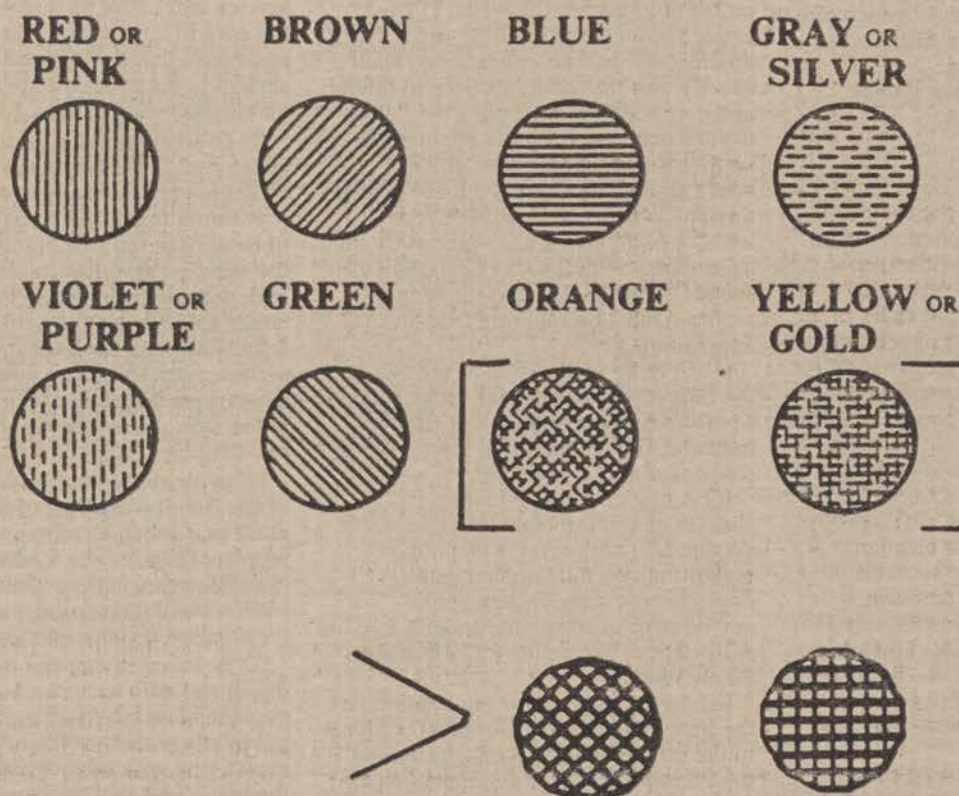
(a) *Character of drawing.* All drawings, except as otherwise provided, must be made with the pen or by a process which will provide high definition upon reproduction. A photolithographic reproduction or

printer's proof copy may be used if otherwise suitable. Every line and letter, including color lining and lines used for shading, must be black. All lines must be clean, sharp, and solid, and must not be fine or crowded. Gray tones or tints may not be used for surface shading or any other purpose. The requirements of this paragraph are not necessary in the case of drawings permitted and filed in accordance with paragraph ▶ (e) ◀ [(d)] of § 2.51.

(d) *Heading.* Across the top of the drawing, beginning one inch (2.5 cm.) from the top edge and not exceeding one fourth of the sheet, there must be placed a heading, listing in separate lines, applicant's complete name ▶ ; ◀ [(.)] applicant's post office address ▶ ; ◀

[(.)] the dates of first use of the mark and first use of the mark in commerce ▶ in an application under section 1(a) of the Act; the priority filing date of the relevant foreign application in an application claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act; ◀ [(except for an application filed under section 44 of the Trademark Act),] and the goods or services recited in the application or a typical item of the goods or services if a number of items are recited in the application. This heading should be typewritten.

(e) *Linings for color.* Where color is a feature of a mark, the color or colors employed may be designated by means of conventional linings as shown in the following color chart:



20. Section 2.53 is proposed to be revised to read as follows:

§ 2.53 Transmission of drawings.

Drawings transmitted to the Patent and Trademark Office, other than those typed in accordance with ▶ § 2.51(e), ◀ [(§ 2.51(d)),] should be sent flat, protected by a sheet of heavy binder's board, or should be rolled for

transmission in a suitable mailing tube to prevent mutilation or folding.

21. Section 2.56 is proposed to be revised to read as follows:

§ 2.56 Specimens.

▶ An ◀ [(The)] application ▶ under section 1(a) of the Act, an amendment to allege use under § 2.76, and a statement of use under § 2.88 ◀ must ▶ each ◀ include ▶ two ◀ [(five)] specimens of

the trademark as [(actually)] used on or in connection with the goods in commerce. The specimens shall be duplicates of the [(actually used)] labels, tags, or containers [(.)] ▶ bearing the trademark, ◀ or the displays associated ▶ with the goods and bearing the trademark ◀ [(therewith or portions thereof),] ▶ (or if the nature of the goods makes use of such specimens impracticable then on documents

associated with the goods or their sale), when made of suitable flat material and of a size not to exceed 8½ inches (21.6 cm.) wide and 11 inches (27.9 cm.) [13 inches (33.0 cm.)] long.

22. Section 2.57 is proposed to be revised to read as follows:

§ 2.57 Facsimiles.

(a) When, due to the mode of applying or affixing the trademark to the goods, or to the manner of using the mark on the goods, or to the nature of the mark, specimens as above stated cannot be furnished, two [five] copies of a suitable photograph or other acceptable reproduction, not to exceed 8½ inches (21.6 cm.) wide and 11 inches (27.9 cm.) [13 inches (33.0 cm.)] long, and clearly and legibly showing the mark and all matter used in connection therewith, shall be furnished.

(b) A purported facsimile which is merely a reproduction of the drawing submitted to comply with § 2.51 will not be considered to be a facsimile depicting the mark as [actually] used on or in connection with the goods or in connection with the services.

23. Section 2.58 is proposed to be amended by revising paragraph (b) to read as follows:

§ 2.58 Specimens or facsimiles in the case of a service mark.

(b) In the case of service marks not used in printed or written form, two [three] audio cassette tape recordings will be accepted.

24. Section 2.59 is proposed to be added to read as follows:

§ 2.59 Filing substitute specimens.

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that any substitute specimens submitted are supported by applicant's affidavit or declaration in accordance with § 2.20 verifying that the substitute specimens were in use in commerce at least as early as the filing date of the application.

(b) In an application under section 1(b) of the Act, after the filing of either an amendment to allege use under § 2.76 or a statement of use under § 2.88, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that the use in commerce of any substitute specimens submitted is supported by applicant's affidavit or declaration in accordance with § 2.20. In the case of a statement of use under

§ 2.86, the applicant must verify that the substitute specimens were in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use.

25. Section 2.61 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 2.61 Action by examiner.

(a) Applications for registration, including amendments to allege use under section 1(c) of the Act, and statements of use under section 1(d) of the Act, will be examined [or caused to be examined by the Examiner of Trademarks,] and, if the applicant is found not entitled to registration for any reason, applicant [he] will be so notified and advised of the reasons therefor and of any formal requirements or objections.

(c) Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, [the Examiner of Trademarks shall notify] each of said parties and also the attorney shall be notified of this fact.

26. Section 2.64(c) is proposed to be added to read as follows:

§ 2.64 Final action.

(c)(1) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month response period after issuance of a final action, the examiner shall examine the amendment. The filing of such an amendment will not extend the time for filing an appeal or petitioning the Commissioner.

(2) If the amendment to allege use under § 2.76 is acceptable in all respects, the applicant will be notified of its acceptance.

(3) If, as a result of the examination of the amendment to allege use under § 2.76, the applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons therefor and of any formal requirements or objections. The examiner shall withdraw the final action previously issued and shall incorporate all unresolved objections or requirements previously stated in the new non-final action.

27. Section 2.65 is proposed to be amended by adding new paragraph (c) to read as follows:

§ 2.65 Abandonment.

(c) If an applicant in an application

under section 1(b) of the Act fails to timely file a statement of use under § 2.88, the application shall be deemed to be abandoned.

28. Section 2.66 is proposed to be revised to read as follows:

§ 2.66 Revival of abandoned applications.

(a) An application abandoned for failure to timely respond, or for failure to timely file a statement of use under § 2.88 in an application under section 1(b) of the Act, may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. [A petition to revive an abandoned application must be accompanied by the required fee, by a showing which is verified or which includes a declaration in accordance with § 2.20 of the causes of the delay, and by the proposed response, unless the same has been previously filed.]

(b) A petition to revive an application abandoned for failure to timely respond must be accompanied by (1) the required fee, (2) a showing which is verified or which includes a declaration in accordance with § 2.20 of the causes of the delay, and (3) the proposed response, unless a response has been previously filed.

(c) A petition to revive an application abandoned for failure to timely file a statement of use under § 2.88 in an application under section 1(b) of the Act must be accompanied by (1) the required petition fee, (2) a showing which is verified or which includes a declaration in accordance with § 2.20 of the causes of the delay, (3) the required fees for the number of requests (in accordance with § 2.89 for extensions of time to file a statement of use) which should have been filed if the application had not been abandoned, and (4) either a statement of use in accordance with § 2.88 (unless the same has been previously filed) or a request in accordance with § 2.89 for an extension of time to file a statement of use.

(d) The petition must be filed promptly. No petition to revive will be granted in an application under section 1(b) of the Act if granting the petition would permit the filing of a statement of use more than 36 months after the issuance of a notice of allowance under section 13(b)(2) of the Act.

29. Section 2.69 is proposed to be revised to read as follows:

§ 2.69 Compliance with other laws.

When the sale or transportation of any product for which registration of a trademark is sought is regulated under

an Act of Congress, the Patent and Trademark Office may, before allowance, make appropriate inquiry as to compliance with such Act for the sole purpose of determining lawfulness of the commerce recited in the application.

30. Section 2.71 is proposed to be revised to read as follows:

§ 2.71 Amendments to correct informalities. [application.]

(a) The application may be amended to correct informalities, or to avoid objections made by the Patent and Trademark Office, or for other reasons arising in the course of examination.

[No amendments to the dates of use will be permitted unless such changes are supported by affidavit or declaration in accordance with § 2.20 by the applicant and by such showing as may be required by the examiner.]

(b) The identification of goods or services may be amended to clarify or limit the identification, but additions thereto will not be permitted.

[Additions to the specification of goods or services will not be permitted unless the mark was in actual use on all of the goods or services proposed to be added by the amendment at the time the application was filed and unless the amendment is accompanied by additional specimens (or facsimiles) and by a supplemental affidavit or declaration in accordance with § 2.20 by the applicant in support thereof.]

(c) Amendment of the verification or declaration will not be permitted. If the verification or declaration [that] filed with the application is [be faulty or] defective, a substitute or supplemental verification or declaration in accordance with § 2.20 must be filed.

A verification or declaration required under § 2.21(a)(6), 2.76(e)(3) or 2.88(e)(3), to be properly signed, must be signed by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association. A verification or declaration which is signed by a person having color of authority to sign, is acceptable for the purpose of determining the timely filing of the paper. Persons having a color of authority to sign are those having first-hand knowledge of the truth of the statements in the verification or declaration. However, a properly signed substitute verification or declaration must be submitted before the application will be approved for publication or registration, as the case may be.

(d)(1) No amendment to the dates of use will be permitted unless the amendment is supported by applicant's affidavit or declaration in accordance

with § 2.20 and by such showing as may be required.

(2) In an application under section 1(a) of the Act, no amendment to specify a date of use which is subsequent to the filing date of the application will be permitted.

(3) In an application under section 1(b) of the Act, after the filing of a statement of use under § 2.88, no amendment will be permitted to the statement of use to recite dates of use which are subsequent to the expiration of the time allowed to applicant for filing a statement of use.

31. Section 2.72 is proposed to be revised to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

(a) Amendments may not be made to the description or drawing of the mark if the character of the mark is materially altered. The determination of whether a proposed amendment materially alters the character of the mark will be made by comparing the proposed amendment with the description or drawing of the mark as originally filed.

(b) In applications under section 1(a) of the Act, amendments [Amendments] to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing was in [actual] use prior to the filing date of the application. [Amendments may not be made if the character of the mark is materially altered.]

(c) In applications under section 1(b) of the Act, amendments to the description or drawing of the mark, which are filed after submission of an amendment to allege use under § 2.76 or a statement of use under § 2.88, may be permitted only if warranted by the specimens (or facsimiles) filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing is in use in commerce. In the case of a statement of use under § 2.88, applicant must verify that the mark shown in the amended drawing was in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use.

(d) In applications under section 44 of the Act, amendments to the description or drawing of the mark may be permitted only if warranted by the

description or drawing of the mark in the foreign registration certificate.

32. Section 2.73 is proposed to be revised to read as follows:

§ 2.73 Amendment to recite concurrent use.

(a) An application under section 1(a) of the Act may be amended [in the examiner's discretion] so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of § 2.42. The examiner will determine whether the application, as amended, is acceptable.

(b) An application under section 1(b) of the Act may not be amended so as to be treated as an application for a concurrent registration until an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been filed in the application, after which time such an amendment may be made, provided the application as amended satisfies the requirements of § 2.42. The examiner will determine whether the application, as amended, is acceptable.

33. Section 2.75 is proposed to be revised to read as follows:

§ 2.75 Amendment to change application to different register.

(a) An application for registration on the Principal Register under section 1(a) or 44 of the Act may be changed to an application for registration on the Supplemental Register and vice versa by amending the application to comply with the rules relating to the appropriate register, as the case may be. [The original filing date may be considered the effective filing date for the purpose of proceedings in the Patent and Trademark Office provided the application as originally filed was sufficient for registration on the register to which amended. Otherwise, the filing date of the amendment will be considered the effective filing date of the application so amended.]

(b) An application under section 1(b) of the Act may be amended to change the application to a different register only after submission of an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88. When such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of the filing of the allegation of use under section 1(c) or 1(d) of the Act.

34. Section 2.76 is proposed to be added to read as follows:

► § 2.76 Amendment to allege use.

(a) An application under section 1(b) of the Act may be amended to allege use of the mark in commerce under section 1(c) of the Act at any time between the filing of the application and the date the examiner approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action. Thereafter, an allegation of use may be submitted only as a statement of use under § 2.88 after the mailing of a notice of allowance under section 13(b)(2) of the Act.

(b) An amendment to allege use must include:

(1) A verified statement that the applicant is believed to be the owner of the mark sought to be registered and that the mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services;

(2) Two specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; and

(3) The fee prescribed in § 2.6.

(c) An amendment to allege use may only be filed when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application unless the amendment to allege use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the amendment pertains. If more than one item of goods or services is specified in the amendment to allege use, the dates of use required in paragraph (b)(1) of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated.

(d) An amendment to allege use must be made in a separate paper from any other filing in the application and should be entitled, at the top of the first page of the paper, "Amendment to allege use." If the amendment is not made in a separate paper it will not be considered and the fee will be refunded.

(e) An amendment to allege use that is filed within the time period specified in paragraph (a) of this section will be examined if it is made in a separate paper and includes:

(1) The fee prescribed in § 2.6;

(2) At least one specimen or facsimile of the mark as used in commerce; and

(3) A verification or declaration signed by the applicant stating that the mark is in use in commerce, and specifying the date of the applicant's first use of the mark in commerce and the goods or services on or in connection with which the mark is used in commerce.

(f) If an amendment to allege use is filed outside the time period specified in paragraph (a) of this section, it will be returned to the applicant. If the amendment is filed within the permitted time period but does not comply with all of the requirements of paragraph (e) of this section, applicant will be notified of the deficiency, which may be corrected provided the mark has not yet been approved for publication or the six-month response period after issuance of a final action has not expired. If the deficiency is not corrected prior to approval of the mark for publication or prior to the expiration of the six-month response period after issuance of a final action, the amendment will not be examined.

(g) If the amendment to allege use is acceptable, the applicant will be notified. The filing of such an amendment shall not constitute a response to any outstanding action by the examiner.

(h) If, as a result of the examination of the amendment to allege use, the applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons therefor and of any formal requirements or objections. The notification shall incorporate all unresolved objections or requirements previously stated.

35. Section 2.77 is proposed to be added to read as follows:

► § 2.77 Amendments between notice of allowance and statement of use.

An application under section 1(b) of the Act may not be amended during the period between the date of mailing of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under § 2.88, except to delete specified goods or services. Other amendments filed during this period will not be considered unless resubmitted at, or after, the time of filing the statement of use.

36. The undesignated center heading for §§ 2.80 through 2.84 is proposed to be revised to read as follows:

► Publication and Post Publication ◀ [Allowance]

37. Section 2.81 is proposed to be revised to read as follows:

§ 2.81 ► Post publication. ◀ [Allowance of application.]

► (a) Except in an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if ◀ [If] no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared and no concurrent use proceeding is instituted, the application will be prepared for issuance of the certificate of registration as provided in § 2.151.

► (b) In an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue. The notice of allowance will state the serial number of the application, the name of the applicant, the correspondence address, the mark, the identification of goods or services, and the date of mailing of the notice of allowance. Thereafter, the applicant shall submit a statement of use as provided in § 2.88. ◀

38. Section 2.82 is proposed to be revised to read as follows:

§ 2.82 Marks on Supplemental Register published only upon registration.

In the case of an application for registration on the Supplemental Register the mark will not be published for opposition but if it appears, after examination or reexamination, that the applicant is entitled to have the mark registered, [the examiner will sign the application file to indicate allowance and prepare the application for issuance of the] ► a ◀ certificate of registration ► will issue ◀ as provided in § 2.151. The mark will be published in the *Official Gazette* when registered.

39. Section 2.83 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 2.83 Conflicting marks.

(a) Whenever an application is made for registration of a mark which so resembles another mark or marks pending registration as to be likely to cause confusion or mistake or to deceive, the mark with the earliest effective filing date will be published in the *Official Gazette* for opposition if eligible for the Principal Register, or issued a certificate of registration if eligible for the Supplemental Register. [A notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest filed mark.]

(b) In situations in which conflicting applications have the same effective filing date, the application with the earliest date of execution will be published in the *Official Gazette* for opposition or issued on the Supplemental Register. [A notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the application with the earliest date of execution.]

40. Section 2.84 is proposed to be revised to read as follows:

§ 2.84 Jurisdiction over published [or allowed] applications.

(a) ▶ The examiner may exercise jurisdiction over an application up to the date the mark is published in the *Official Gazette*. After publication of an application under section 1(a) or 44 of the Act the examiner may, with the permission of the Commissioner, exercise jurisdiction over the application. After publication of an application under section 1(b) of the Act, the examiner may exercise jurisdiction over the application after the date of mailing of the notice of allowance under section 13(b)(2) of the Act. After publication, and prior to the date of mailing of a notice of allowance in an application under section 1(b), the examiner may, with the permission of the Commissioner, exercise jurisdiction over the application. ◀ [After publication or allowance the examiner may exercise jurisdiction over an application by special authority from the Commissioner.]

(b) ▶ After publication, but before the printing of the certificate of registration in an application under section 1(a) or 44 of the Act, or before the printing of the notice of allowance in an application under section 1(b) of the Act, an application which is not the subject of an inter partes proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Commissioner to restore jurisdiction of the application to the examiner for consideration of the amendment and further examination. The amendment of an application which is the subject of an inter partes proceeding before the Board is governed by § 2.133. ◀ [Amendments may be made after the allowance of an application if the certificate has not been printed, on the recommendation of the examiner approved by the Commissioner, without withdrawing the allowance.]

41. Section 2.86 is proposed to be revised to read as follows:

§ 2.86 ▶ Application may include multiple goods or services comprised in single class or multiple classes. ◀ [Plurality of goods or services comprised in single class may be covered by single application.]

▶ (a) An ◀ [A single] application may recite ▶ more than one item ◀ [a plurality] of goods, or ▶ more than one service, ◀ [a plurality of services.] comprised in a single class, provided the ▶ goods or services are specifically identified and the applicant either has used the mark on or in connection with all of the goods or services specified, or has a bona fide intention to use the mark on or in connection with all of the goods or services specified. ◀ [particular identification of each of the goods or services be stated and the mark has actually been used on or in connection with all of the goods or in connection with all of the services specified.]

▶ (b) An application also may be filed to register the same mark for goods and/or services comprised in multiple classes, provided the goods or services are specifically identified; a fee equaling the sum of the fees for filing an application in each class is submitted; and the application includes either dates of use and two specimens for each class, or a statement of a bona fide intention to use the mark on or in connection with all of the goods or services specified in each class. An amendment to allege use under § 2.76 or a statement of use under § 2.88, filed in a multiple class application under section 1(b) of the Act, must include, for each class, the required fee, dates of use and two specimens. A single certificate of registration for the mark shall be issued.

(c) The applicant may not allege use as to certain goods or services and a bona fide intention to use as to other goods or services in the same application, regardless of the number of classes contained therein.

42. Section 2.87 is proposed to be revised to read as follows:

§ 2.87 ▶ Dividing an application. ◀ [Combined applications.]

▶ (a) An application may be physically divided into two or more separate applications upon submission by the applicant of a request therefor, in accordance with paragraph (c) of this section. In the case of a request to divide out some, but not all, of the goods or services in a class, a fee for each new separate application to be created by the division must be submitted. Any outstanding time period for action by the applicant in the original application at

the time of the division will be applicable to each new separate application created by the division. ◀ [An application also may be filed to register the same mark for any or all of the goods and/or services upon or in connection with which the mark is actually used and which fall within a plurality of classes. However, dates of use for each class, five specimens for each class, and a fee equaling the sum of the fees for filing an application in each class are required. A single certificate of registration for the mark may be issued.]

▶ (b) A request to divide an application may be filed at any time between the filing of the application and the date the examiner approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Trademark Trial and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the examiner approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action.

(c) A request to divide an application should be made in a separate paper from any other amendment or response in the application, and should be entitled, at the top of the first page of the paper, "Request to divide application." ◀

43. A new undesignated center heading, and two new sections, thereunder, designated §§ 2.88 and 2.89, are proposed to be added to read as follows:

▶ Post Notice of Allowance

§ 2.88 Filing statement of use after notice of allowance.

(a) In an application under section 1(b) of the Act, a statement of use, required under section 1(d) of the Act, must be filed within six months after the date of mailing of a notice of allowance under section 13(b)(2) of the Act, or within an extension of time granted under § 2.89. A statement of use that is filed prior to the date of mailing of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

(b) A statement of use must include:

(1) A verified statement that the applicant is believed to be the owner of the mark sought to be registered and that the mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the

mark in commerce, the type of commerce, those goods or services specified in the notice of allowance on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services;

(2) Two specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; and

(3) The fee prescribed in § 2.6.

(c) The statement of use may only be filed when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the notice of allowance, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the statement of use pertains. If more than one item of goods or services is specified in the statement of use, the dates of use required in paragraph (b)(1) of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated.

(d) A statement of use must be made in a separate paper from any other filing in the application and should be entitled, at the top of the first page of the paper, "Statement of use under § 2.88." If the statement of use is not made in a separate paper it will not be considered and the fee will be refunded.

(e) A statement of use that is filed within a permitted period of time after the date of mailing of the notice of allowance under section 13(b)(2) of the Act will be examined if it is made in a separate paper and includes:

(1) The fee prescribed in § 2.6;

(2) At least one specimen or facsimile of the mark as used in commerce;

(3) A verification or declaration signed by the applicant stating that the mark is in use in commerce, and specifying the date of the applicant's first use of the mark in commerce and the goods or services on or in connection with which the mark is used in commerce.

(f) If the statement of use does not comply with all of the requirements of paragraph (e) of this section, applicant will be notified of the deficiency. If the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency. After the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use.

(g) If the statement of use is filed within a permitted period of time after the date of mailing of the notice of allowance under section 13(b)(2) of the Act and complies with all of the requirements of paragraph (e) of this section, it will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the statement of use, applicant is found not entitled to registration, applicant will be so notified and advised of the reasons and of any formal requirements or objections. If the statement of use is acceptable in all respects, the applicant will be notified of its acceptance.

(h) A statement of use that includes all of the elements specified in paragraph (e) of this section may be amended in accordance with §§ 2.59 and 2.71 through 2.75.

(i)(1) The goods or services specified in a statement of use must conform to those goods or services identified in the notice of allowance. If appropriate, an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or "those goods or services identified in the notice of allowance except * * * followed by an identification of the goods or services to be deleted.

(2) If any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the examiner shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use.

(3) The statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with § 2.71(b).

(j) The mark shown in the specimens submitted with the statement of use must be materially the same as the mark depicted in the drawing of record.

(k) The statement of use may be accompanied by a separate request to amend the drawing in the application, in accordance with §§ 2.51 and 2.72.

(l) The failure to timely file a statement of use which includes all of the elements specified in paragraph (e) of this section, after the date of mailing of a notice of allowance under section 13(b)(2) of the Act, shall result in the abandonment of the application.

§ 2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required under § 2.88 by submitting:

(1) A written request, before the expiration of the six-month period following the date of mailing of a notice of allowance under section 13(b)(2) of the Act;

(2) The fee prescribed in § 2.6; and

(3) A verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce.

(b) The applicant may request further six-month extensions of time for filing the statement of use by submitting:

(1) A written request, prior to the expiration of a previously granted extension of time;

(2) The fee prescribed in § 2.6;

(3) A verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce; and

(4) A showing of good cause, as specified in section (d) of this paragraph.

(c) Extensions of time under paragraph (b) of this section will be granted only in six-month increments and may not aggregate more than 24 months.

(d) The showing required by paragraph (b)(4) of this section must include:

(1) An allegation that the applicant has not yet made use of the mark in commerce on all the goods or services specified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce, and

(2) A statement of facts demonstrating ongoing efforts to make use of the mark in commerce on or in connection with each of the goods or services specified in the verified statement of continued bona fide intention to use required under paragraph (b) of this section. Those efforts may include, without limitation, product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors,

steps to obtain required governmental approval, or other similar activities. In the alternative, a satisfactory explanation for the failure to make such efforts must be submitted.

(e)(1) At the time of the filing of a statement of use, or during any time remaining in the existing period for filing a statement of use, applicant may file one request, in accordance with paragraph (a) or (b) of this section, for a six-month extension of time for filing a statement of use, provided that the time requested would not extend beyond 36 months from the date of mailing of the notice of allowance. Thereafter, applicant may not request any further extensions of time.

(2) In lieu of the allegations required for a showing of good cause under paragraph (d) of this section, applicant may show good cause in a request filed pursuant to paragraph (e)(1) of this section by asserting that applicant believes that it has made valid use of the mark in commerce, as evidenced by the submitted statement of use, but that if the statement of use is found by the Patent and Trademark Office to be fatally defective, applicant will need additional time in which to file a new statement of use.

(f) The goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance. Any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinserted in the application. If appropriate, an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or "those goods or services identified in the notice of allowance except * * *" followed by an identification of the goods or services to be deleted.

(g) The applicant will be notified of the grant or denial of a request for an extension of time. Failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing period or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under § 2.88. If, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time. Otherwise, the only recourse available after denial of a request for an extension of time is a

petition to the Commissioner in accordance with §§ 2.86 or 2.146. A petition from the denial of a request for an extension of time to file a statement of use shall be filed within one month from the date of mailing of the denial of the request. ◀

44. Section 2.99 is proposed to be amended by revising paragraph (g) and adding new paragraph (h) to read as follows:

§ 2.99 Application to register as concurrent user.

(g) Registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings. ▶ Applications to register under section 1(b) of the Act of 1946 are subject to concurrent use registration proceedings only after an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been filed.

(h) The Trademark Trial and Appeal Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding. ◀

45. Section 2.101 is proposed to be amended by revising paragraph (b) to read as follows:

§ 2.101 Filing an opposition.

(b) Any ▶ entity which ◀ [person who] believes that ▶ it ◀ [he] would be damaged by the registration of a mark on the Principal Register may oppose the same by filing an opposition ▶ , ◀ which should be addressed to the Trademark Trial and Appeal Board.

▶ The opposition need not be verified, and may be signed by the opposer or the opposer's attorney or other authorized representative. ◀

46. Section 2.111 is proposed to be amended by revising paragraph (b) to read as follows:

§ 2.111 Filing petition for cancellation.

(b) Any ▶ entity which ◀ [person who] believes that ▶ it ◀ [he] is or will be damaged by a registration may file a petition, which should be addressed to the Trademark Trial and Appeal Board, to cancel the registration in ▶ whole or in part. ◀ [its entirety or for each class in the registration specified in the petition.] ▶ The petition need not be verified, and may be signed by the petitioner or the petitioner's attorney or other authorized representative. ◀ The petition may be filed at any time in the case of

registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14(c) or (e) of the Act. In all other cases the petition and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

47. Section 2.129 is proposed to be amended by adding new paragraph (d) to read as follows:

§ 2.129 Oral argument; reconsideration.

▶ (d) When a party to an inter partes proceeding before the Trademark Trial and Appeal Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Board will enter a declaratory judgment in favor of that party, subject to the party's establishment of constructive use. The time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the entry of the declaratory judgment. ◀

48. Section 2.133 is proposed to be revised to read as follows:

§ 2.133 Amendment of application or registration during proceedings.

▶ (a) ◀ An application involved in a proceeding may not be amended in substance nor may a registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion.

▶ (b) If, in an inter partes proceeding, the Trademark Trial and Appeal Board finds that a party whose application or registration is the subject of the proceeding is not entitled to registration in the absence of a specified restriction to the involved application or registration, the Board will allow the party time in which to file a request that the application or registration be amended to conform to the findings of the Board, failing which judgment will be entered against the party.

(c) Geographic limitations will be considered and determined by the Trademark Trial and Appeal Board only in the context of a concurrent use registration proceeding.

(d) A plaintiff's pleaded registration will not be restricted in the absence of a counterclaim to cancel the registration in whole or in part, except that a

counterclaim need not be filed if the registration is the subject of another proceeding between the same parties or anyone in privity therewith. ◀

49. Section 2.161 is proposed to be revised to read as follows:

§ 2.161 Cancellation for failure to file affidavit or declaration during sixth year.

Any registration under the provisions of the Act and any registration published under the provisions of section 12(c) of the Act (§ 2.153) shall be cancelled as to any ▶ goods or services recited ◀ [class] in the registration at the end of six years following the date of registration or the date of such publication, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit or declaration in accordance with § 2.20 ▶ setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching a specimen or facsimile showing current use of the mark, or an affidavit or declaration under § 2.20 ◀ [showing that said mark is in use in commerce as to such class or] showing that its nonuse as to ▶ any goods or services recited in the registration ◀ [such class] is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark [.] ▶ as to those goods or services. ◀

50. Section 2.162 is proposed to be amended by revising paragraphs (e), (f), and (g) to read as follows:

§ 2.162 Requirements for affidavit or declaration during sixth year.

(e) State that the registered mark is in use in commerce ▶, list the goods or services recited in the registration on or in connection with which the mark is in use in commerce, ◀ and specify the nature of such commerce (except under paragraph (f) of this section). The statement must be ▶ accompanied by a specimen or facsimile, for each class of goods or services, showing current use of the mark. If the specimen or facsimile is found to be deficient, a substitute specimen or facsimile may be submitted and considered even though filed after the sixth year has expired, provided it is supported by an affidavit or declaration pursuant to § 2.20 verifying that the specimen or facsimile was in use in commerce prior to the expiration of the sixth year; ◀ [supported by evidence which shows that the mark is in use, and normally such evidence consists of a specimen or a facsimile specimen which is currently in use, or a statement of

facts concerning use. The supporting evidence should be submitted with the affidavit or declaration, but if it is not or if the evidence submitted is found to be deficient, the evidence, or further evidence, may be submitted and considered even though filed after the sixth year has expired;]

(f) If the registered mark is not in use in commerce [.] ▶ on or in connection with the goods or services recited in the registration, ◀ recite facts to show that nonuse ▶ as to those goods or services ◀ is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark [.] ▶ as to those goods or services. If the facts recited are found ▶ insufficient, ◀ [not to be sufficient,] further evidence or explanation may be submitted and considered even though filed after the sixth year has expired; and

(g) Contain the statement of use in commerce or statement as to nonuse and appropriate ▶ specimen or facsimile, ◀ [evidence,] as required in paragraphs (e) and (f) of this section, for each class to which the affidavit or declaration pertains in this registration.

51. Section 2.181 is revised to read as follows:

§ 2.181 Term of original registrations and renewals.

(a) ▶ (1) ◀ Registrations issued under the Act, ▶ prior to November 16, 1989, ◀ whether on the Principal Register or on the Supplemental Register, remain in force for twenty years [.] ▶ from their date of issue or renewal, if that date is prior to November 16, 1989, ◀ and may be renewed for periods of ▶ ten ◀ [twenty] years from the expiring period unless previously cancelled or surrendered.

▶ (2) Registrations issued under the Act on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered. ◀

52. Section 2.185(a)(1) is proposed to be revised to read as follows:

§ 2.185 Requirements for assignments.

(a) * * *

(1) ▶ (i) In the case of a registration, the ◀ [The] certificate of registration is identified in the assignment ▶ document ◀ by the certificate number ▶ and the date of registration, ◀ [(the date of registration should also be given,) or, ▶ if the mark which is the subject of the registration and the goods or services to which the registration pertains are identified in the assignment

document (or the assignment is of all registrations owned by the assignor), the certificate number is identified in a transmittal letter or attachment which is not incorporated in the assignment document, in which case such letter or attachment shall become part of the record of the assignment in the Patent and Trademark Office; or ◀ [the application for registration shall have been first filed in the Patent and Trademark Office and the application is identified in the assignment by serial number (the date of filing should also be given);]

▶ (ii) In the case of an application, the application for registration shall have been first filed in the Patent and Trademark Office and the application is identified in the assignment document by serial number and the filing date, or, if the mark which is the subject of the application and the goods or services to which the application pertains are identified in the assignment document (or the assignment is of all applications owned by the assignor), the serial number is identified in a transmittal letter or attachment which is not incorporated in the assignment document, in which case such letter or attachment shall become part of the record of the assignment in the Patent and Trademark Office; or if an assignment is executed concurrently with or subsequent to the execution of an application but before the application is filed or before its serial number and filing date are ascertained, it should adequately identify the application by its date of execution, name of the applicant, mark, and goods or services; ◀

53. Section 2.187 is proposed to be revised to read as follows:

§ 2.187 Certificate of registration may issue to assignee.

The certificate of registration may be issued to the assignee of the applicant, or in a new name of applicant, [and certificate of registration will be so issued] provided ▶ that such party makes a written request therefor in the application record, by the time the application is being prepared for issuance of the certificate of registration, and ◀ an appropriate document is of record in the Assignment Division of the Patent and Trademark Office ▶, ◀ [no later than the time the notice of publication is mailed, or if] ▶ If the assignment or name change ◀ [such] document is not of record [.] ▶ in the Assignment Division, ◀ then ▶ the written request must state ◀ [if a statement] that such document has

been filed for recordation ►.◄ [is in the application file by the time the application is being prepared for issuance of the certificate of registration.] The address of the assignee must be made of record in the application file ► and ◄ [or] in the recorded document.

Dated: March 13, 1989.

Donald J. Quigg.

*Assistant Secretary and Commissioner of
Patents and Trademarks.*

[FR Doc. 89-10541 Filed 5-3-89; 8:45 am]

BILLING CODE 3510-16-M

Testis Testis Testis

Thursday
May 4, 1989

Part III

Department of Labor

Employment and Training Administration

20 CFR Parts 626, et al.

Job Training Partnership Act;
Redesignation and Revision of
Regulations for Job Corps Program
under Title IV-B, and Removal of
Comprehensive Employment and Training
Act Regulations; Proposed Rule

DEPARTMENT OF LABOR**Employment and Training Administration**

20 CFR Parts 626, 636, 638, 675, 676, 677, 678, 679, 680, 684, 685, 688, and 689

Job Training Partnership Act; Redesignation and Revision of Regulations for Job Corps Program Under Title IV-B; and Removal of Comprehensive Employment and Training Act Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to revise and redesignate the regulations for the operation of the Job Corps. The proposed rule updates legal citations and establishes a new, streamlined, system of procedures for implementing the Job Corps program. The proposed rule also removes obsolete regulations which had been promulgated under the repealed Comprehensive Employment and Training Act.

DATE: Written comments are invited from interested parties. Comments must be received on or before June 5, 1989.

ADDRESS: Written comments shall be mailed or delivered to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N4510, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Director, Office of Job Corps.

Commenters wishing an acknowledgement of receipt of their comments must submit them by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy F. Sullivan, Chief, Division of Program Planning and Development, Office of Job Corps, Employment and Training Administration, U.S. Department of Labor, Room N4510, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0556 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

The Employment and Training Administration (ETA) of the Department of Labor (DOL) proposes to revise and redesignate the regulations for the operation of the Job Corps. The proposed rule will update legal citations and establish a new, streamlined, system of procedures for implementing the Job Corps program.

The Job Corps Program

The Job Training Partnership Act (JTPA or the Act) was enacted in 1982 to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment. Public Law 97-300, 96 Stat. 1322 (October 12, 1982), as amended; 29 U.S.C. 1501 *et seq.* JTPA replaced and repealed the prior Comprehensive Employment and Training Act (CETA). Pub. L. 93-203, 87 Stat. 839 (December 28, 1973), as amended. JTPA 184(a)(1).

The Job Corps, authorized under Title IV-B of JTPA, is a national program for economically disadvantaged young men and women. 29 U.S.C. 1691-1709. Originally established by Title I-A of the Economic Opportunity Act of 1964, Pub. L. 88-452, 78 Stat. 508 (August 20, 1964), the Job Corps program was continued under Title IV of CETA and thereupon by JTPA Title IV-B.

Residential and nonresidential Job Corps centers throughout the country provide corpsmembers with intensive programs of education, vocational training (including pre-apprenticeship training), work experience, and other activities. See 29 U.S.C. 1698. The Job Corps assists eligible young individuals who need and can benefit from an intensive program, operated in a group setting, to become more responsible, employable, and productive citizens; and to do so in a way that contributes, where feasible, to the development of national, State, and community resources, and to the development and dissemination of techniques for working with the disadvantaged that can be widely utilized by public and private institutions and agencies. 29 U.S.C. 1691.

Job Corps centers are operated by a variety of organizations, both public and private. Many centers are operated under contract with private-for-profit and private nonprofit organizations, State and local government entities, Native American entities, community-based organizations, and JTPA recipients. Contract centers vary in size. 29 U.S.C. 1697.

Civilian Conservation Centers (CCCs) are Job Corps Centers operated by the Department of Interior and the Department of Agriculture under interagency agreements with DOL. CCCs are small centers located on public lands, primarily in southern and northwestern States. 29 U.S.C. 1697.

The Job Corps previously had been authorized under CETA, and, therefore,

the Job Corps regulations currently are published at 20 CFR Part 684, among the old CETA regulations. See 44 FR 64290 (November 6, 1979); see also 29 CFR Part 97a (1976), 40 FR 50812 (October 31, 1975). However, with the enactment of JTPA almost six years ago, and based on the experience of the agency in administering the program, DOL proposes to revise the Job Corps regulations and redesignate them as a new 20 CFR Part 638, among the JTPA regulations. Some specific features of the proposed rule are described below.

Administrative Provisions

Because the Job Corps utilizes contractors to operate centers and, unlike JTPA Titles I, II, and III programs, does not use grants to Governors (and thus does not provide funds through Governors to JTPA service delivery areas) for this purpose, the majority of the JTPA regulations covering administrative provisions of the Act (20 CFR Part 636) do not apply to the Job Corps program. Those which do apply are cited below in Subpart A of proposed Part 638. Other regulations affecting the governing and administration of the Job Corps program are cited elsewhere in proposed Part 638.

Policy and Requirements Handbook

While no major programmatic or policy changes are included in the proposed rule, the method of implementing Job Corps program requirements and procedures is affected. Proposed § 638.100 provides for the issuance of a *Job Corps Policy and Requirements Handbook* (Handbook). The Handbook will be incorporated by reference into each contract or agreement to operate a Job Corps center, program, or entity, and will contain policy and requirements necessary for, and appropriate to, the administration and management of the Job Corps program.

Subject areas to be covered by the Handbook include:

Outreach and screening Placement, Educational Program, Vocational Training, Corpsmember Support, Health Services, Residential Living, Administration and Management, Facilities Security and Related Subjects, Financial Management, Procurement, Property Management, and Subcontracting for Contract Centers, Nondiscrimination.

These areas cover all aspects of Job Corps program operations and correspond with language in the proposed rule alluding to procedures to be established or issued by the Job

Corps Director. Such procedures are currently included in the Job Corps regulations at 20 CFR Part 684 (1987). The overall effect will be to streamline regulations and enhance program flexibility.

Technical Corrections and Other Clarifying Rules

DOL is taking this opportunity to update and clarify the Job Corps regulations by deleting references to CETA. References to new or revised requirements under JTPA are inserted. Also, editorial changes are also made (e.g., nomenclature revisions, simplification of language, deletion of repetitive references).

Taxation

The Job Training Partnership Act Amendments of 1986, Pub. L. 99-496 section 12, 100 Stat. 1261, 1264 (October 16, 1986), amended section 437(c) of the Act relating to taxation of Job Corps operations. The amendment was to ensure that all Job Corps activities and transactions authorized under Title IV-B of the Act which are carried out pursuant to contracts with the Secretary

by either for-profit or non-profit Job Corps contractors are exempted from all State gross receipts, excise, sales, use, business privilege, or similar taxes (such as occupational taxes) measured by gross receipts. "Joint Explanatory Statement of Compromise Agreement on S. 2069," 132 Cong. Rec. H8809 (October 1, 1986). The language of section 437(c) of the Act, as amended, therefore is reflected in proposed § 638.812 below.

Legal Fees

Similar to the current regulations at 20 CFR 684.91, the proposed 20 CFR 638.534 below provides for the payment of legal fees for corpsmembers under certain circumstances. The proposed rule gives the Job Corps Director (and the Job Corps Director's designees) greater flexibility and discretion with respect to such assistance and the level of such assistance.

However, pursuant to section 105 of the Department of Labor Appropriations Act, 1989, Pub. L. 100-436, notwithstanding the regulations, the Job Corps currently will not pay the expenses of legal counsel or representation in any criminal case or

proceeding for a Job Corps participant, unless certified to and approved by the Secretary of Labor that a public defender is not available. The Secretary, through the Assistant Secretary for Employment and Training, has designated the Job Corps Director to make such certifications and approvals. The Job Corps Director will issue instructions to Job Corps offices and center operators to implement the appropriations provision.

Claims for Losses

A two-year time limit has been added for all claims for losses, damage, and theft. This is consistent with Federal Tort Claims Act procedures, and permits the expeditious handling of claims.

Redesignation Table

The table below provides a "crosswalk" between current and proposed Job Corps regulations. Where reference is made to deleted sections or procedures, in most cases corresponding requirements and procedures will be issued by the Job Corps Director, as appropriate, in the *Job Corps Policy and Requirements Handbook*.

REDESIGNATION TABLE*

| Current Regs. Section | Proposed Regs. Section | Subject | Revision/Action |
|-----------------------------|------------------------|---|--|
| 684.1 | 638.100 | Purpose and scope | Establish policy/requirements handbook. |
| 684.10 | 638.200 | Definitions | Add, delete, and update definitions. |
| 684.20 | | Available funds | Deleted. |
| 684.21 | 638.300 | Funding eligibility | Streamline content. |
| 684.22 | 638.301 | Funding procedures | Delete procedures; update references. |
| 684.23 | 638.302 | Performance measurement | Delete specific procedures. |
| 684.24 | 638.303 | Site selection/facilities management | Delete specific procedures & CCC & Governor notification requirements. |
| 684.24a | 638.304 | Historical preservation | Left intact. |
| 684.25 | 638.305 | Capital improvements | Delete specific procedures. |
| 684.26 | 638.306 | Facility maintenance | Delete specific procedures. |
| 684.27 | 638.307 | Facility surveys | Delete specific procedures. |
| 684.30 (a), (b), (c), & (e) | 638.401 | Outreach & screening | Moved & revised. |
| 684.30(d) | 638.400 | Participant eligibility | Moved & revised. |
| 684.31 | | Selection/assignment | Deleted. |
| 684.32 | 638.402 | Readmission | Delete specific procedures. |
| | 638.403 | Selective Service registration | Add JTPA SSS compliance requirements. |
| 684.33 | 638.404 | Transfers | Delete specific procedures. |
| 684.34 | 638.405 | Enrollment extensions | Delete specific procedures. |
| 684.35 | 638.406 | Federal status of CMs | Left intact; update cites to JTPA. |
| 684.36 | 638.407 | Terminations | Delete specific procedures. |
| 684.37 | | Exit procedures | Deleted. |
| 684.38 | | Certificate of attainment | Deleted. |
| 684.39 | 638.408 | Transportation | Delete specific procedures. |
| 684.40 | 638.409 | Placement/job development | Delete specific procedures. |
| 684.50 | 638.500 | Orientation program | Delete specific procedures. |
| 684.51 | 638.501 | Corpsmember handbook | Delete specific procedures. |
| 684.52 | 638.502 | Basic education program | Delete specific content requirements. |
| 684.53 | 638.503 | Vocational training | Delete specific procedures. |
| 684.54 | 638.504 | Occupational exploration | Deleted specific content requirements. |
| 684.55 | 638.505 | Schedule of training | Left intact. |
| 684.56 | | Certification/licensing/academic credit | Deleted. |
| 684.57 | 638.506 | Supplies/equipment purchasing | Delete specific procedures. |
| 684.58 | 638.507 | Work experience | Delete specific procedures. |
| | 638.508 | Sale of services/objects | Add procedures for sales to community. |
| 684.59 | 638.509 | Leisure time employment | Left intact. |
| 684.60 | 638.510 | Health care & services | Delete specific procedures. |
| 684.61 | 638.510 | Physical/medical standards | Delete specific procedures. |
| 684.62 | 638.510 | Ocular care | Delete specific procedures. |

REDESIGNATION TABLE*—Continued

| Current Regs. Section | Proposed Regs. Section | Subject | Revision/Action |
|-----------------------|------------------------|--|--|
| 684.63 | 638.510 | Immunization | Delete specific procedures. |
| 684.64 | 638.510 | Disease control | Delete specific procedures. |
| 684.65 | 638.510 | Dental care | Delete specific procedures. |
| 684.66 | 638.510 | Pregnancy | Delete specific procedures. |
| 684.67 | | Mental health | Deleted. |
| 684.68 | 638.511 | Drug use & abuse | Intact with minor language revision. |
| 684.69 | 638.512 | Sex-related issues | Delete specific procedures; add sexual harassment as topic. |
| 684.70 | 638.513 | Death | Delete specific procedures. |
| 684.71 | | Critical medical reporting | Deleted. |
| 684.72 | 638.514 | Residential support | Delete specific procedures. |
| 684.73 | 638.515 | Recreation/avocation | Delete specific procedure. |
| 684.74 | 638.516 | Laundry, mail, telephone | Left intact. |
| 684.75 | 638.517 | Counseling | Delete specific procedures. |
| 684.76 | 638.518 | Intergroup relations | Delete specific procedures. |
| 684.77 | 638.519 | Incentives system | Delete specific procedures. |
| 684.78 | 638.520 | Corpsmember government | Intact with minor language revision. |
| 684.79 | 638.521 | Corpsmember welfare association | Delete specific procedures. |
| 684.80 | 638.522 | Corpsmember progress evaluation | Delete specific procedures. |
| 684.81 | 638.523 | Food service | Delete specific procedures. |
| 684.82 | 638.524 | Allowances & allotments | Delete specific procedures. |
| 684.83 | 638.525 | Clothing | Delete specific procedures. |
| 684.84 | 638.526 | Tort and other claims | Mostly intact; time limit added. |
| 684.85 | 638.527 | Federal employees' compensation | Left intact. |
| 684.86 | 638.528 | Social Security | Left intact. |
| 684.87 | 638.529 | Income taxes | Delete specific procedures. |
| 684.88 | 638.530 | Emergency uses | Mostly intact; delete reporting. |
| 684.89 | 638.531 | Limits on emergency projects | Delete specific procedures. |
| 684.90 (a)-(e) | 638.532 | Annual leave | Left intact. |
| 684.90 (f)-(i) | 638.533 | Other absences | Delete specific procedures. |
| 684.91 | 638.534 | Legal services | Delete specific procedures; increase flexibility. |
| 684.92 | 638.535 | Voting rights | Delete specific procedures. |
| 684.93 | 638.536 | Religious rights | Left intact. |
| 684.94 | 638.537 | Privacy rights | Delete specific procedures; see 29 CFR Part 70a. |
| 684.95 | 638.537 | Disclosure of information | Delete specific procedures; see 29 CFR Part 70. |
| 684.96 | 638.538 | Disciplinary procedures | Delete specific procedures. |
| | 638.539 | Complaints and disputes | New. |
| 684.98 | 638.540 | Cooperation with agencies | Delete specific procedures. |
| 684.99 | 638.541 | Training opportunities | Delete specific procedures; add reference to JTPA. |
| 684.100 | 638.600 | VST projects | Add program language. |
| 684.101 | 638.600 | Annual VST plan | Delete specific procedures. |
| 684.102 | 638.600 | VST project proposals | Delete specific procedures. |
| 684.103 | 638.600 | VST review/approval | Delete specific procedures. |
| 684.104 | 638.600 | VST project modification | Delete specific procedures. |
| 684.105 | 638.600 | VST project cancellation/deferral | Delete specific procedures. |
| 684.106 | 638.601 | VST budgeting | Intact with minor language revision. |
| 684.107 | 638.600 | Monitoring VST | Delete specific procedures. |
| 684.108 | 638.600 | Public identification of VST projects | Delete specific procedures. |
| 684.109 | 638.600 | Supplementation of VST funds | Delete specific procedures. |
| 684.110 | 638.700 | Experimental projects | Intact with minor language revision. |
| 684.120 | 638.800 | Program management | Delete specific personnel standards. |
| 684.122 | 638.801 | Staff training | Delete specific procedures. |
| 684.123 | 638.802 | Corpsmember records management | Delete specific procedures. |
| 684.124 | 638.803 | Safety | Intact with minor language revision. |
| 684.125 | 638.804 | Environmental health | Delete specific procedures. |
| 684.126 | 638.805 | Security/law enforcement | Delete specific procedures. |
| 684.127 | | Forms & documents | Deleted. |
| 684.128 | 638.806 | Property/management procurement | Delete specific procedures. |
| 684.129 | 638.807 | Imprest/petty cash funds | Intact with minor language revision. |
| 684.130 | 638.808 | Contract center financial management and reporting | Delete specific procedures; combine with CCC procedures. |
| 684.131 | 638.808 | CCC financial management & reporting | Delete specific procedures; combine with contract center procedures. |
| 684.132 | 638.809 | Audit | Left intact. |
| 684.133 | 638.810 | Reporting | Delete specific procedures/reports. |
| 684.134 | 638.811 | Review and Evaluation | Delete specific procedures. |
| 684.135 | 638.812 | State/local taxation | Intact with minor language revision. |
| 684.140 | | A-95 notification of intent | Deleted. |
| 684.141 | | Content of A-95 notification of intent | Deleted. |
| 684.142 | | Review & comment on A-95 notification of intent | Deleted. |
| 684.1(b) | 638.813 | Nondiscrimination; nonsectarian activities | Added. |
| 684.1(b) | 638.814 | Lobbying; political activities; unionization | Minor language revision. |
| 684.1(b) | 638.815 | Charging fees | Revised. |

* In the table, references are made, by acronym, to the Job Training Partnership Act (JTPA), applied vocational skills training (VST), employment and training handbooks (ETHs), corpsmembers (CMs), Civilian Conservation Centers (CCCs), and the Selective Service System (SSS).

Comprehensive Employment and Training Act Regulations; Other Technical Amendments

The Comprehensive Employment and Training Act (CETA) was repealed in 1982. Pub. L. 97-300 184(a)(1), 96 Stat. 1322, 1357 (October 13, 1982). CETA regulations were maintained, however, for historical and reference purposes. With this publication, DOL proposes to remove the CETA regulations from 20 CFR Chapter V. The CETA regulations continue to apply to litigation arising under CETA. Other minor technical and clarifying regulations are proposed as well.

Regulatory Impact

The proposed rule implements Job Training Partnership Act Title IV-B, makes technical changes, and clarifies existing regulations to reflect continuing policies. It would not have the financial or other impact to make it a major rule and therefore the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127, 5 U.S.C. 601 note.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

The proposed rule contains no new collection of information requirements. Collection of information requirements contained in the proposed rule are the same as those approved in the current regulations at 20 CFR Part 684.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.211, "Job Corps."

List of Subjects

20 CFR Parts 626, 636, 675-680, 685, 688 and 689

Grant programs, Labor, Manpower training programs.

20 CFR Part 638

Contract programs, Labor, Training and employment programs.

20 CFR Part 684

Contract programs, Labor, Training and employment programs.

Proposed Rule

Accordingly, it is proposed that 20 CFR Chapter V be amended as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Authority

1. The authority citation to 20 CFR Part 626 continues to read:

Authority: 29 U.S.C. 1579(a).

§ 626.2 [Amended]

1a. Section 626.2 is amended by deleting from paragraph (a) the phrase "with the exception of the Job Corps regulations, which are set forth in Part 684 of Title 20".

§ 626.3 [Amended]

2. The consolidated table of contents in § 626.3 is amended by removing the words "PARTS 637-638—[RESERVED]" and all the text following and inserting in lieu thereof the following:

626.3 Table of contents for the regulations under the Job Training Partnership Act.

* * * * *

PART 637—[RESERVED]

PART 638—JOB CORPS PROGRAM UNDER TITLE IV-B OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Purpose and Scope

Sec.
638.100 General.

Subpart B—Definitions

638.200 Definitions.

Subpart C—Funding, Site Selection, and Facilities Management

638.300 Eligibility for funds and eligible deliverers.
638.301 Funding procedures.
638.302 Center performance measurement.
638.303 Site selection and facilities management.
638.304 Historical preservation.
638.305 Capital improvements.
638.306 Protection and maintenance of contract center facilities owned or leased by Job Corps.
638.307 Facility surveys.

Subpart D—Enrollment, Transfers, Terminations, and Placements in the Job Corps

638.400 Eligibility for participation.
638.401 Outreach and screening of participants.
638.402 Enrollment by readmission.
638.403 Selective Service.
638.404 Transfers.
638.405 Extensions of enrollment.
638.406 Federal status of corpsmembers.
638.407 Terminations.
638.408 Transportation.

638.409 Placement and job development.

Subpart E—Center Operations

638.500 Orientation program.
638.501 Corpsmember handbook.
638.502 Job Corps basic education program.
638.503 Vocational training.
638.504 Occupational exploration programs.
638.505 Scheduling of training.
638.506 Purchase of vocational supplies and equipment.
638.507 Work experience.
638.508 Sale of services or objects.
638.509 Leisure-time employment.
638.510 Health care and services.
638.511 Drug use and abuse.
638.512 Sexual behavior and harassment.
638.513 Death.
638.514 Residential support services.
638.515 Recreation/avocational program.
638.516 Laundry, mail, and telephone service.
638.517 Counseling.
638.518 Intergroup relations program.
638.519 Incentives system.
638.520 Corpsmember government and leadership programs.
638.521 Corpsmember welfare association.
638.522 Evaluation of corpsmember progress.
638.523 Food service.
638.524 Allowances and allotments.
638.525 Clothing.
638.526 Tort and other claims.
638.527 Federal employees' compensation.
638.528 Social Security.
638.529 Income taxes.
638.530 Emergency use of personnel, equipment and facilities.
638.531 Limitation on the use of corpsmembers in emergency projects.
638.532 Annual leave.
638.533 Other corpsmember absences.
638.534 Legal services to corpsmembers.
638.535 Voting rights.
638.536 Religious rights.
638.537 Disclosure of information.
638.538 Disciplinary procedures and appeals.
638.539 Complaints and disputes.
638.540 Cooperation with agencies and institutions.
638.541 Job Corps training opportunities.

Subpart F—Applied Vocational Skills Training (VST)

Sec.
638.600 Applied vocational skills training (VST) through work projects.
638.601 Applied VST budgeting.

Subpart G—Experimental, Research, and Demonstration Projects

638.700 Experimental research, and demonstration projects.

Subpart H—Administrative Provisions

638.800 Program management.
638.801 Staff training.
638.802 Corpsmember records management.
638.803 Safety.
638.804 Environmental health.
638.805 Security and law enforcement.
638.806 Property management and procurement.
638.807 Imprest and petty cash funds.

- 638.808 Center financial management and reporting.
- 638.809 Audit.
- 638.810 Reporting requirements.
- 638.811 Review and evaluation.
- 638.812 State and local taxation of Job Corps deliverers.
- 638.813 Nondiscrimination; nonsectarian activities.
- 638.814 Lobbying; political activities; unionization.
- 638.815 Charging fees.

PART 638—JOB CORPS PROGRAM UNDER TITLE IV-B OF THE JOB TRAINING PARTNERSHIP ACT [Revised and Redesignated]

3. Part 684 is redesignated as Part 638 and the redesignated Part 638 is revised to read as follows:

PART 638—JOB CORPS PROGRAM UNDER TITLE IV-B OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Purpose and Scope

- Sec.
- 638.100 General.

Subpart B—Definitions

- 638.200 Definitions.

Subpart C—Funding, Site Selection, and Facilities Management

- 638.300 Eligibility for funds and eligible deliverers.
- 638.301 Funding procedures.
- 638.302 Center performance measurement.
- 638.303 Site selection and facilities management.
- 638.304 Historical preservation.
- 638.305 Capital improvements.
- 638.306 Protection and maintenance of contract center facilities owned or leased by Job Corps.
- 638.307 Facility surveys.

Subpart D—Enrollment, Transfers, Terminations, and Placements in the Job Corps

- 638.400 Eligibility for participation.
- 638.401 Outreach and screening of participants.
- 638.402 Enrollment by readmission.
- 638.403 Selective Service.
- 638.404 Transfers.
- 638.405 Extensions of enrollment.
- 638.406 Federal status of corpsmembers.
- 638.407 Terminations.
- 638.408 Transportation.
- 638.409 Placement and job development.

Subpart E—Center Operations

- 638.500 Orientation program.
- 638.501 Corpsmember handbook.
- 638.502 Job Corps basic education program.
- 638.503 Vocational training.
- 638.504 Occupational exploration programs.
- 638.505 Scheduling of training.
- 638.506 Purchase of vocational supplies and equipment.
- 638.507 Work experience.
- 638.508 Sale of services or objects.
- 638.509 Leisure-time employment.
- 638.510 Health care and services.

- 638.511 Drug use and abuse.
- 638.512 Sexual behavior and harassment.
- 638.513 Death.
- 638.514 Residential support services.
- 638.515 Recreation/avocational program.
- 638.516 Laundry, mail, and telephone service.
- 638.517 Counseling.
- 638.518 Intergroup relations program.
- 638.519 Incentives system.
- 638.520 Corpsmember government and leadership programs.
- 638.521 Corpsmember welfare association.
- 638.522 Evaluation of corpsmember progress.
- 638.523 Food service.
- 638.524 Allowances and allotments.
- 638.525 Clothing.
- 638.526 Tort and other claims.
- 638.527 Federal employees' compensation.
- 638.528 Social Security.
- 638.529 Income taxes.
- 638.530 Emergency use of personnel, equipment and facilities.
- 638.531 Limitation on the use of corpsmembers in emergency projects.
- 638.532 Annual leave.
- 638.533 Other corpsmember absences.
- 638.534 Legal services to corpsmembers.
- 638.535 Voting rights.
- 638.536 Religious rights.
- 638.537 Disclosure of information.
- 638.538 Disciplinary procedures and appeals.
- 638.539 Complaints and disputes.
- 638.540 Cooperation with agencies and institutions.
- 638.541 Job Corps training opportunities.

Subpart F—Applied Vocational Skills Training (VST)

- 638.600 Applied vocational skills training (VST) through work projects.
- 638.601 Applied VST budgeting.

Subpart G—Experimental, Research, and Demonstration Projects

- 638.700 Experimental research and demonstration projects.

Subpart H—Administrative Provisions

- 638.800 Program management.
- 638.801 Staff training.
- 638.802 Corpsmember records management.
- 638.803 Safety.
- 638.804 Environmental health.
- 638.805 Security and law enforcement.
- 638.806 Property management and procurement.
- 638.807 Imprest and petty cash funds.
- 638.808 Center financial management and reporting.
- 638.809 Audit.
- 638.810 Reporting requirements.
- 638.811 Review and evaluation.
- 638.812 State and local taxation of Job Corps deliverers.
- 638.813 Nondiscrimination; nonsectarian activities.
- 638.814 Lobbying; political activities; unionization.
- 638.815 Charging fees.

Authority: 29 U.S.C. 1579(a).

Subpart A—Purpose and Scope

§ 638.100 General.

(a) The purpose of this part is to delineate the policies, rules, and regulations that govern the operation of the Job Corps program, authorized under Title IV-B of the Job Training Partnership Act (Act). Job Corps is one of the broad range of programs for youth authorized by the Act. Job Corps centers are located in both rural and urban areas and provide training, education, residential and a variety of other support services necessary to prepare corpsmembers to become more responsible, productive, and employable. (Section 421.)

(b) *Job Corps Policy and Requirements Handbook.* The policies and procedures required in this part which are to be established by the Job Corps Director shall be contained in a policy and requirements handbook which shall be incorporated by reference in each contract or agreement to operate a Job Corps center, program, or entity.

(c) Definitions for terms used in this part are found in section 4 of the Act and in Subpart B of this part. Statutory authority for the regulations in this part is found in section 169(a) of the Act (29 U.S.C. 1579(a)). Applicable statutory provisions, including sections of the Act other than section 169(a), are noted parenthetically in this part.

Subpart B—Definitions

§ 638.200 Definitions.

In addition to the definitions contained in section 4 of the Act, the following definitions apply to programs under Title IV-B of the Act and under this part:

"Absent Without Official Leave (AWOL)" means the unauthorized absence of a corpsmember without official leave in excess of 24 continuous hours.

"Act" means the Job Training Partnership Act.

"Allotment" means:

(1) A portion of the readjustment allowance prescribed by this part, which portion is paid monthly during the period of services of a corpsmember directly to a spouse of the corpsmember, to the child(ren) of the corpsmember, or to any other relative of the corpsmember who draws substantial support from the corpsmember; and

(2) A supplement to the portion allotted by the corpsmember, made by the payment of an equal amount by DOL. (Section 429(d).)

"Allowance" means a benefit provided by DOL to corpsmembers by cash, check, credit, voucher, direct provision, or otherwise for such personal, travel, leave, quarters, subsistence, transportation, equipment, clothing, recreational services, and other expenses as the Job Corps Director may deem necessary or appropriate to the corpsmembers' needs. (Section 429.)

"Capital improvement" means any modification, addition, restoration or other improvement.

(1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a "fixed asset"; and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

"Center" means an organizational entity, including all of its subparts, providing Job Corps training and designated as a Job Corps center by the Job Corps Director.

"Center Director" means a center's chief official or the Center Director's designee.

"Center operator" means an agency or contractor that runs a center under an agreement or contract with DOL.

"Center review board" means the group at a center that reviews charges brought against corpsmembers for infractions of center rules.

"Civilian Conservation Center (CCC)" means a center operated on public land under an agreement between DOL and another federal agency, which may provide, in addition to other training and assistance, programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

"Contract center" means a center administered under a contract between Job Corps and a corporation, partnership, public agency, or similar legal entity.

"Contracting officer" means a DOL official authorized to enter into contracts or agreements on behalf of DOL.

"Corpsmember" means an individual who has been enrolled in Job Corps. For resident corpsmembers, an individual is enrolled from the date he or she leaves home to begin government-authorized travel to the assigned center to the date of scheduled arrival at the official travel destination authorized by the Center Director upon termination from Job Corps. For nonresident corpsmembers, an individual is enrolled from the time

he or she arrives at any center activity or program each day until he or she leaves such activity or program.

"Corpsmember handbook" means the document developed by the center operator and given to each corpsmember during orientation that outlines center services, rules, and regulations and corpsmember rights and responsibilities (see § 638.501 of this part).

"Deliverer" means any individual or organization that receives federal funds directly from DOL to establish, operate, or provide service to any Job Corps program or activity.

"Department of Labor (DOL)" means the United States Department of Labor, including its agencies and organizational units.

"Disruptive home life" means a home life characterized by such conditions as:

(1) The youth is living in an orphanage or other protective institution;

(2) The youth is suffering from serious parental neglect; or

(3) The youth's father, mother, or legal guardian is a chronic invalid, alcoholic, narcotics addict, or has any other serious health condition.

"Economically disadvantaged" means an individual who:

(1) Receives, or is a member of a family which receives, cash welfare payments under a federal, State, or local welfare program;

(2) Has, or is a member of a family which has, received a total family income for the six-month period prior to application to the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of:

(i) The poverty level determined in accordance with criteria established by the Department of Health and Human Services; or

(ii) 70 percent of the lower living standard income level;

(3) Is receiving food stamps pursuant to the Food Stamp Act of 1977;

(4) Is a foster child on behalf of whom State or local government payments are made; or

(5) Is a handicapped individual whose own income meets the requirements of paragraphs (1) or (2) of this definition, but who is a member of a family whose income does not meet such requirements.

"Employment and Training Administration (ETA)" means the agency within DOL which includes the Job Corps.

"Enrollee" means a corpsmember.

"Enrollment" means:

(1) For resident corpsmembers, the period of time from the date the corpsmember leaves home to begin government-authorized travel to the assigned center to the date of the scheduled arrival at the official travel destination authorized by the Center Director upon termination from the Job Corps; and

(2) For nonresident corpsmembers, the period of time from the time the corpsmember arrives at any center activity or program until he or she leaves such activity or program.

"Environmental health program" means the center program of health, safety, and prevention of environmental hazards for staff and corpsmembers.

"Facility survey" means a review of center facilities conducted by professional architects and/or engineers to establish the condition of a facility and determine repairs, alterations, or replacement, if any, necessary to meet health and safety, building code or programmatic requirements.

"Family" means one or more persons living in a single residence who are related by blood, marriage, or adoption. A step-child or step-parent is considered to be related by marriage.

(1) For purposes of this definition, a person not living in the single residence but who is claimed as a dependent on another person's federal income tax return for the previous year is presumed, unless otherwise demonstrated, to be part of the other person's family.

(2) An individual with handicaps shall be considered a family of one when applying for Job Corps.

(3) An individual, except as provided by paragraph (2) of this definition, who receives less than 50 percent of support from the family, and who is not the principal earner and who is not the spouse of the principal earner shall not be considered a member of the family. Such an individual shall be considered a family of one.

"Family income" means all income actually received from all sources by all members of the family for the six-month period prior to application. Family size is the maximum number of family members during the six month period prior to application. When computing family income, income of a spouse and other family members is counted for the portion of the six-month period prior to application that the person was actually a part of the family unit.

(1) For the purpose of determining an individual's eligibility for participation in the Job Corps program, family income includes:

(i) Gross wages, including wages from community service employment (CSE),

work experience, and on-the-job training (OJT) paid from Job Training Partnership Act funds, and salaries (before deductions);

(ii) Net self-employment income (gross receipts minus operating expenses); and

(iii) Other money income received from sources such as interest, net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, and periodic income from insurance policy annuities, and other sources of income.

(2) Family income does not include:

(i) Non-cash income such as food stamps or compensation received in the form of food or housing;

(ii) Imputed value of owner-occupied property, i.e., rental value;

(iii) Public assistance payments;

(iv) Cash payments received pursuant to a State plan approved under Titles I, IV, X, or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act;

(v) Federal, State, or local unemployment benefits;

(vi) Capital gains and losses;

(vii) One-time unearned income, such as, but not limited to:

(A) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(B) One-time or fixed-term scholarship or fellowship grants;

(C) Accident, health, and casualty insurance proceeds;

(D) Disability and death payments including fixed term (but not lifetime) life insurance annuities and death benefits;

(E) One-time awards and gifts;

(F) Inheritance, including fixed-term annuities;

(G) Fixed-term workers compensation awards;

(H) Soil bank payments; and

(I) Agricultural crop stabilization payments;

(viii) Pay or allowances which were previously received by any veteran while serving on active duty in the Armed Forces;

(ix) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36, of Title 38, U.S. Code;

(x) Payments made under the Trade Act of 1974;

(xi) Payments received under the Black Lung Benefits Act (30 U.S.C. 901 *et seq.*);

(xii) Any income directly or indirectly derived from, or arising out of, any property held by the United States in trust for any Indian tribe, band, or group

or any individual; per capita payments; and services, compensation or funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty; and any property distributed or income derived therefrom, or any amounts paid to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim; and

(xiii) Child support payments.

"Finance center" means the agency or contractor which handles the payment of corpsmember allowances, allotments, and transportation charges.

"Imprest fund" means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small purchases. Imprest funds occur only at CCC's. (For contract centers, see definition of "petty cash fund".)

"Individual with handicaps" means any person within the definition at 29 CFR 32.3 of an "individual with handicaps", for the DOL regulations entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance" at 29 CFR Part 32. Although the language employs the plural form "handicaps", individuals with a single impairment or handicap are covered within this definition. See also §§ 638.539(g) and 638.811(a) of this part.

"Job Corps" means the agency of the Department of Labor established by section 422 of the Job Training Partnership Act (JTPA) (29 U.S.C. 1692) to perform those functions of the Secretary of Labor set forth in Title IV-B of JTPA (29 U.S.C. 1691 *et seq.*).

"Job Corps Director" means the chief official of the Job Corps or the Job Corps Director's designee.

"Leisure-time employment" means part-time paid employment of corpsmembers.

"Lower living standard income level" means the income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary based on the most recent "lower living family budget" issued by the Secretary.

"Maximum benefits" means the apportioning of various segments of Job Corps training so that individual needs of each corpsmember are met and the corpsmember achieves as much benefit from the Job Corps as his or her abilities allow.

"National office" means the national office of the Job Corps.

"National training contractor" means a labor union, union-affiliated organization, business organization, or a combination thereof, having contracts with the national office to provide vocational training, placement, or other services under a single contract including multi-area operations.

"Occupational exploration program" means the center program whereby a corpsmember is made aware of the vocational training opportunities made available by the center in order for the corpsmember to make an informed vocational selection.

"Operational support services" means activities or services required for the operation of Job Corps, such as outreach and screening services, union-contracted vocational training and off-center educational training, placement services, certain health services, and miscellaneous logistical services.

"Petty cash fund" means a cash fund of a fixed amount from a contract center finance or disbursing officer to a contract center's duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small purchases. Petty cash funds occur at contract centers. (For CCC's, see definition of "imprest fund".)

"Placement" means corpsmember employment, entry into the Armed Forces, or enrollment in other training or education programs, within six months following termination from Job Corps (or such other period as may be announced by the Job Corps Director by notice in the Federal Register).

"Placement agency" means an organization acting pursuant to a contract with the Job Corps that provides placement services to corpsmembers.

"Poverty level" means the annual income level at or below which families are considered to live in poverty, as annually determined by the Department of Health and Human Services.

"Readjustment allowance" means the money accumulated by and reserved for each corpsmember on a monthly basis during tenure in Job Corps that is paid in a lump sum after termination.

"Readmission" means re-enrollment of a corpsmember who has previously been enrolled in Job Corps for less than 24 months and applies for reenrollment to the basic program and can be expected to complete a program within the remaining portion of the youth's 24-month enrollment period.

"Regional appeal board" means the board designated by the Regional Director in a regional office that

considers corpsmember appeals from disciplinary discharges.

"Regional Director" means the chief official of a regional office or the Regional Director's designee.

"Regional office" means a regional office of the Job Corps.

"Regional Solicitor" means the chief official of a regional office of the DOL Office of the Solicitor or the Regional Solicitor's designee.

"Screening agency" means an organization acting pursuant to a contract with the Job Corps that performs outreach, screens, and enrolls youth into Job Corps.

"Secretary" means the Secretary of Labor, the chief official of DOL, or the Secretary's designee.

"Site survey" means a survey of a potential location for a center that includes a preliminary engineering evaluation of the condition and capacity of existing buildings, pavements, utility systems, installed equipment, and all other real property components as well as a preliminary cost estimate for acquisition of facilities, necessary rehabilitation, modification, and new construction required.

"State" means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau/Trust Territory.

"Termination" means the act of officially removing a corpsmember from the Job Corps when the corpsmember leaves the Job Corps program for any reason.

"Transfer" means the reassignment of a corpsmember from one center to another.

"Unauthorized goods" means firearms and ammunition; explosives and incendiaries; knives with blades longer than 2" (two inches); homemade weapons; all other weapons and instruments used primarily to inflict personal injury; stolen property; drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons.

"Utilization study" means a facility implementation study which is developed subsequent to a site survey or assessment after the regional and national offices have agreed, on the basis of the site survey, that the site is potentially favorable for a center. After the utilization study is approved by the Job Corps Director it becomes the basis for scope of work, budget, design,

rehabilitation, and construction of facilities for the center.

"Vocational skills training (VST)" means activities that provide vocational instruction to corpsmembers through actual construction or improvement of permanent facilities or other approved projects.

"Work experience program" means a program for assignment of a corpsmember to an actual job situation, either on-center or off-center for the purpose of enhancing a corpsmember's employability. Work experience requiring the corpsmember to work over 25 hours per week is subject to the provisions of the Fair Labor Standards Act and State and local minimum wage laws for hours worked in excess of 25 hours per week.

Subpart C—Funding, Site Selection, and Facilities Management

§ 638.300 Eligibility for funds and eligible deliverers.

(a) Funds shall be made available by the Secretary to eligible deliverers for the operation of centers and for the provision of Job Corps operational support services.

(b) Eligible deliverers for the operation of centers and for the operational support services necessary to center operation shall be units of federal, State, and local government, State and local public agencies, private-for-profit and non-profit organizations, Indian tribes and organizations, and labor unions, union-affiliated, and union/management organizations.

§ 638.301 Funding procedures.

(a) Contracting officers shall request proposals for the operation of all centers and for provision of operational support services, either directly from federal agencies or pursuant to the Federal Acquisition Regulation (48 CFR Chapter 1) and the DOL Acquisition Regulation (48 CFR Chapter 29) for work to be done under contract. The requests for proposal for each center and for each operational support service contract shall describe specifications and standards unique to the operation of the center and for the provision of operational support services.

(b) Job Corps center operators shall be selected and funded on the basis of proposals received, according to criteria established by the Job Corps Director.

(c) The contracting officer shall negotiate with eligible deliverers for operational support services on the basis of the criteria developed for each specific service to be rendered. Such criteria shall be listed in the request for proposals.

(d) The Secretary is authorized to expend funds made available for Job Corps for the purpose of printing, binding, and disseminating data and other information related to Job Corps to public agencies, private organizations, and the general public. (Section 438(3)(A)).

(e) Notwithstanding the limitations of Titles II, III, and IV of the Act, funds made available under those titles and transferred to the Job Corps program pursuant to § 638.541 of this part may be used for the Job Corps program in accordance with the provisions of this part. (Sections 427(b) and 439).

(f)(1) In accordance with this section and procedures established by the Job Corps Director, the contracting officers shall enter into contracts with public or private (including nonprofit) entities for the provision of outreach and screening services, which shall be performed in accordance with § 638.402 of this part and procedures established by the Job Corps Director. (Sections 424 and 425.)

(2) In accordance with this section and procedures established by the Job Corps Director, the contracting officers shall enter into contracts with public or private (including nonprofit) entities for the provision of placement services, which shall be performed in accordance with § 638.409 of this part and procedures established by the Job Corps Director.

(g) The Secretary may enter into interagency agreements with eligible deliverers that are federal agencies for the establishment and operation of CCCs. Such interagency agreements shall ensure compliance by such federal agencies with the regulations under this part.

(h) All agreements and contracts pursuant to this section shall be made pursuant to the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; and the Federal Acquisition Regulation (48 CFR Chapter 1) and the DOL Acquisition Regulation (48 CFR Chapter 29).

(i) Job Corps payments to federal agencies that operate CCCs shall be made by a transfer of obligational authority from DOL to the respective operating agency on a quarterly basis.

§ 638.302 Center performance measurement.

The Job Corps Director shall establish a national performance measurement system for centers, which shall include annual performance goals.

§ 638.303 Site selection and facilities management.

(a) The Job Corps Director shall approve the location and size of all centers.

(b) Contract centers shall be established, relocated or expanded in accordance with procedures established by the Job Corps Director.

(c) For federally-operated centers, either the Job Corps Director or a federal agency may propose a site on public lands and if discussions between them establish the advisability of such, the Job Corps Director may require that the agency submit a site survey and utilization study. If the Job Corps Director decides to establish a center, facilities engineering and real estate management will be conducted by the Job Corps Director or by the federal agency pursuant to an interagency agreement and this part.

§ 638.304 Historical preservation.

The Job Corps Director shall review the "National Register of Historic Places," issued by the National Park Service, to identify sites, buildings, structures, and objects of archeological, architectural, or historic significance which could be destroyed or adversely affected by any proposed project or site selection. Procedures for review are included in the "National Register of Historic Places" at 36 CFR Part 800.

§ 638.305 Capital improvements.

Capital improvement projects and new construction on Job Corps Centers shall be requested and performed in accordance with procedures established by the Job Corps Director.

§ 638.306 Protection and maintenance of contract center facilities owned or leased by Job Corps.

The Job Corps Director shall establish procedures for the protection and maintenance of contract center facilities owned or leased by Job Corps which shall be consistent with Federal Property Management Regulations at 41 CFR Chapter 101.

§ 638.307 Facility surveys.

The Job Corps Director shall issue procedures to conduct periodic facility surveys of centers.

Subpart D—Enrollment, Transfers, Terminations, and Placements in the Job Corps.**§ 638.400 Eligibility for participation.**

To participate in the Job Corps, a young man or woman must be an eligible youth who:

(a) Is at least 14 and not yet 22 years of age at the time of enrollment, except in the case of an otherwise eligible

handicapped individual 14 years of age or older, for whom there is no upper age limit, *provided*, however, that youths under the age of 16 are *not* eligible for enrollment absent a determination by the Secretary to enroll them;

(b) Is a United States citizen, United States national, a lawfully admitted permanent resident alien, a lawfully admitted refugee or parolee, or other alien who has been permitted to accept permanent employment in the United States by the Attorney General or the Immigration and Naturalization Service;

(c) Requires additional education, training, or intensive counseling and related assistance in order to secure and hold meaningful employment, participate successfully in regular school work, qualify for other suitable training programs, satisfy Armed Forces entry requirements, or qualify for a job where prior skill or training is a prerequisite;

(d) Is economically disadvantaged;

(e) Has sufficient ability to benefit from the program;

(f) Demonstrates an interest in obtaining the maximum benefit from the program, as evidenced by a voluntary desire to enroll and the youth's signature on the application form;

(g) Has a signed consent for enrollment from a responsible parent or guardian if the applicant is unemancipated and under the age of majority (unless the parent or guardian cannot be located), pursuant to applicable laws on age of majority and emancipation of minors;

(h) Has established suitable arrangements for the care of any dependent children for the proposed period of enrollment;

(i) Is not on probation, parole, or under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, unless the court or other appropriate agency certifies in writing that release from the supervision of the agency is satisfactory to the agency and does not violate applicable laws and regulations;

(j) To qualify for residential training, is currently living in an environment so characterized by cultural deprivations, a disruptive homelife, or other disorienting conditions as to substantially impair prospects for successful participation in a nonresidential program providing needed training, education, or assistance;

(k) Is physically and emotionally able to participate in normal Job Corps duties without costly or extensive medical treatment;

(l) Is free of any behavioral problem that would potentially prevent other enrollees from receiving the benefit of the program, or impede satisfactory

relationships between the center to which the enrollee is assigned and surrounding communities; and

(m) Has a background, characteristics, and physical and mental capabilities which provide reasonable expectations of employment after training.

§ 638.401 Outreach and screening of participants.

In accordance with procedures issued by the Job Corps Director:

(a) The Regional Director, as contracting officer, shall contract with screening agencies, which shall perform Job Corps outreach and screening functions.

(b) Screening agencies shall develop outreach and referral sources, actively seek out potential applicants, conduct personal interviews with all applicants, and determine who are interested and likely Job Corps participants.

(c) Screening agencies shall complete all Job Corps application forms.

(1) Except as provided in paragraph (c)(2) of this section, screening agencies shall determine whether applicants meet the eligibility criteria in § 638.400 of this part for participation in the Job Corps.

(2) The Job Corps Director may provide that determinations with respect to one or more of the eligibility criteria set forth in § 638.400 of this part shall be made by the Regional Director on the basis of information and recommendations supplied by the screening agency.

(3) An applicant for participation in the Job Corps who has been determined ineligible may appeal that determination pursuant to § 638.539 of this part. (Section 423, 424, 425, and 144(a).)

§ 638.402 Enrollment by readmission.

Procedures for screening and selection of applicants for readmission shall be issued by the Job Corps Director.

§ 638.403 Selective Service.

The Job Corps Director shall develop procedures to ensure that:

(a) Each male applicant 18 years of age or older has evidence that he has complied with § 3 of the Military Selective Service Act (50 U.S.C. App. 453), by presenting and submitting to registration if required pursuant to such section; and

(b) When a male corpsmember turns 18 years of age after enrollment, he submits to the center operator evidence that he has complied with § 3 of the Military Selective Service Act (50 U.S.C. App. 453), by presenting and submitting to registration if required pursuant to such section. (Section 504.)

§ 638.404 Transfers.

Transfer of a corpsmember from one center of assignment to another center shall be made only in accordance with procedures issued by the Job Corps Director.

§ 638.405 Extensions of enrollment.

The center operator shall see that the total length of enrollment of a corpsmember does not exceed two years (Section 426(a)) except that an extension of enrollment may be authorized in accordance with procedures issued by the Job Corps Director.

§ 638.406 Federal status of corpsmembers.

Corpsmembers shall not be deemed federal employees and shall not be subject to the provisions of law relating to federal employment, including those relating to hours of work, rates of employment, leave, unemployment compensation, and federal employee benefits, except as provided by 5 U.S.C. 8143(a) (federal employees' compensation) and by §§ 638.526 and 638.527 of this part. (Section 436(a)).

§ 638.407 Terminations.

The Job Corps Director shall issue procedures for the termination of corpsmembers.

§ 638.408 Transportation.

The transportation of corpsmembers to and from centers shall occur in accordance with procedures issued by the Job Corps Director.

§ 638.409 Placement and job development.

The overall objective of all Job Corps activities shall be to enhance each corpsmember's employability and to effect the successful placement of each corpsmember. Placement efforts shall concentrate on jobs related to a corpsmember's vocational training, on military service when this is the corpsmember's choice, or on acceptance and placement in other educational and/or training programs. The placement of corpsmembers shall be performed in accordance with procedures issued by the Job Corps Director.

Subpart E—Center Operations**§ 638.500 Orientation program.**

The center operator shall design and implement a reception and orientation program in accordance with procedures issued by the Job Corps Director.

§ 638.501 Corpsmember handbook.

Each center operator shall develop a corpsmember handbook which provides

essential information to corpsmembers for distribution to all corpsmembers in accordance with procedures issued by the Job Corps Director.

§ 638.502 Job Corps basic education program.

The Job Corps Director shall develop basic education curricula for use at centers. Corpsmembers are considered to be in-school youths. The Job Corps Director, in coordination with regional offices, shall review and approve the basic education program at each center. Center operators shall provide the following educational programs at a minimum:

- (a) Reading and language skills;
- (b) Mathematics;
- (c) A program to prepare eligible corpsmembers for the American Council on Education Tests of General Educational Development (GED);
- (d) World of work;
- (e) Health education;
- (f) Driver education; and
- (g) English as a second language (ESL) programs for selected center operators (regional offices shall arrange for the assignment of selected applicants needing ESL programs to the centers where such programs are available).

§ 638.503 Vocational training.

(a) Each center shall provide enrollees with individualized competency-based training in an area which will best contribute to the corpsmember's upward mobility into permanent long-term employment opportunities. Specific vocational training programs offered at individual centers will be subject to the approval of the Job Corps Director in accordance with policies issued by the Job Corps Director.

(b) The Job Corps Director may determine that it is appropriate to contract for vocational training programs at specific centers with national business, union, or union-affiliated organizations in order to facilitate entry of corpsmembers into the workforce. All agreements with these national training contractors will be contracted at the national level in accordance with policies issued by the Job Corps Director, the Federal Acquisition Regulation (48 CFR Chapter 1), and the DOL Acquisition Regulation (48 CFR Chapter 29).

§ 638.504 Occupational exploration program.

An occupational exploration program shall be provided by all centers in accordance with procedures issued by the Job Corps Director.

§ 638.505 Scheduling of training.

The amount of time for each corpsmember's education and vocational training shall be apportioned to the individual needs of each corpsmember pursuant to procedures developed by the Job Corps Director.

§ 638.506 Purchase of vocational supplies and equipment.

The Job Corps Director shall develop procedures for the low-cost sale to corpsmembers of vocational tools, clothing, and other equipment that are prerequisites to employment.

§ 638.507 Work experience.

(a) The center operator shall emphasize and implement programs of work experience for corpsmembers through center program activities or through arrangement with employers. Work experience shall be under actual working conditions and should enhance the employability, responsibility, and confidence of the corpsmembers.

(b) The following limitations shall be observed in establishing work experience programs:

(1) Corpsmembers shall only be assigned to work meeting the safety standards of § 638.803 of this part.

(2) Any work experience arranged for employment not covered by a federal, State, or local minimum wage law shall have prior regional office approval.

(3) When work experience with pay is arranged, the corpsmember, for applicable wage provisions of the Davis-Bacon Act, the Fair Labor Standards Act, the Service Contract Act, and other applicable minimum wage laws, shall be considered a joint employee of the Job Corps and the work experience employer.

(i) The wages paid by Job Corps (including the reasonable cost to Job Corps of room, board, and other facilities, as well as clothing and living allowances) shall be no less than the federal minimum wage rate set forth in section (6)(a)(1) of the Fair Labor Standards Act (FLSA) for up to 25 hours a week. The work experience employer shall pay the corpsmember, in cash, any wages above the FLSA minimum whenever such additional amounts are required by the Davis-Bacon Act, the Service Contract Act, the State or local minimum wage law, or other applicable minimum wage law. For any time in excess of 25 hours per week, the work experience employer shall pay the corpsmember, in cash, the entire wage at the highest wage rate required by any applicable law.

(ii) In addition to the cash wages required to be paid by work experience

employers by paragraph (b)(3)(i) of this section, work experience employers, after the first six weeks of work by a corpsmember, shall also pay additional cash wages to the corpsmember at an hourly rate of 25 percent of the wage set forth in section 6(a)(1) of the Fair Labor Standards Act.

§ 638.508 Sale of services or objects.

The services rendered or objects produced at the center may be sold at cost to corpsmembers or center employees, but shall not be sold in the community unless such services or products are not readily available from sources in the area.

§ 638.509 Leisure time employment.

A center operator may authorize gainful leisure time employment of corpsmembers as long as such employment does not interfere with required scheduled activities.

§ 638.510 Health care and services.

The center operator shall provide a health program, including basic medical, dental, and mental health services, for all corpsmembers from admission until termination from the Job Corps. The program shall be developed in accordance with procedures issued by the Job Corps Director.

§ 638.511 Drug use and abuse.

The Job Corps Director shall develop procedures to ensure that the center operator offers corpsmembers counseling and education programs related to drug and alcohol use and abuse.

§ 638.512 Sexual behavior and harassment.

The Job Corps Director shall develop procedures to ensure that center operators establish rules concerning sexual behavior and harassment. See also §§ 638.539(g) and 638.813(a) of this part.

§ 638.513 Death.

In each case of corpsmember death, the center operator shall follow procedures established by the Job Corps Director, including notification of next of kin and for disposition of remains. See also § 638.524(d) of this part.

§ 638.514 Residential support services.

The center operator shall provide for residential support services structured as an integral part of the overall training program. This service shall include a secure, attractive physical and social environment, seven days a week, 24 hours a day, designed to enhance learning and personal development. All corpsmembers, including nonresidents

while they are on-center, shall be provided with the full program of services in accordance with procedures issued by the Job Corps Director.

§ 638.515 Recreation/avocational program.

The center operator shall develop a recreation/avocational program in accordance with procedures issued by the Job Corps Director.

§ 638.516 Laundry, mail, and telephone service.

(a) The center operator shall provide adequate laundry services and supplies at no cost to corpsmembers. Corpsmembers shall be encouraged to launder, iron, and repair their personal clothing.

(b) The center operator shall establish a system for prompt delivery of mail received by corpsmembers in a manner that protects the confidentiality of such mail, and shall arrange for a sufficient number of conveniently located pay telephones for corpsmember use.

§ 638.517 Counseling.

The center operator shall establish and conduct an ongoing structured counseling program in accordance with procedures issued by the Job Corps Director.

§ 638.518 Intergroup relations program.

The center operator shall conduct a structured intergroup relations program designed to reduce prejudice, prevent discriminatory behavior by staff and corpsmembers, and increase understanding among racial/ethnic groups and between men and women. The program shall be developed in accordance with procedures issued by the Job Corps Director.

§ 638.519 Incentives system.

The center operator shall establish and maintain its own incentives system for corpsmembers in accordance with procedures established by the Job Corps Director.

§ 638.520 Corpsmember government and leadership programs.

The center operator shall establish an elected corpsmember government and corpsmember leadership program in accordance with procedures established by the Job Corps Director.

§ 638.521 Corpsmember welfare associations.

The center operator shall develop a plan for the organization and operation of a corpsmember welfare association, to be run by an elected corpsmember government for the benefit for all corpsmembers and with the help of a

center staff advisor. This plan shall be developed in accordance with procedures issued by the Job Corps Director.

(a) Corpsmember welfare association revenues may be derived from such sources as snackbars, vending machines, disciplinary fines, etc.

(b) Corpsmember welfare association activities shall be funded from corpsmember welfare association revenues.

§ 638.522 Evaluation of corpsmember programs.

(a) The center operator shall implement a system to evaluate the progress of each corpsmember in receiving the maximum benefit from the program. The system shall be developed in accordance with procedures issued by the Job Corps Director.

§ 638.523 Food service.

(a) The Job Corps Director shall establish procedures to ensure that meals for corpsmembers are nutritionally well-balanced, of good quality, and sufficient in quantity. Food shall be prepared and served in a sanitary manner.

(b) Non-corpsmembers shall be charged for food provided for them unless prior regional office approval has been obtained. Such charges shall be sufficient to cover the cost of the food and its preparation.

§ 638.524 Allowances and allotments.

(a) The Secretary shall periodically establish rates of allowances and allotments to be paid corpsmembers pursuant to sections 429 (a), (c), and (d) of the Act, and the Job Corps Director shall publish these rates as a notice in the Federal Register.

(b) The Job Corps Director shall ensure that each corpsmember receives a readjustment allowance for each 30 days of satisfactory participation in Job Corps after their termination from the program if he/she has remained in Job Corps for at least 180 days in pay status or if he/she terminates after 90 days in pay status as a maximum benefits completer. In the event that a corpsmember dies, receives a medical termination, or enlists in the Armed Forces in fewer than 90 days after enrollment, he/she shall be eligible for the accrued readjustment allowance. (Section 429(c).)

(c) The Job Corps Director shall establish procedures to allow corpsmembers to authorize a deduction(s) from their monthly readjustment allowance, which shall be matched by an equal amount from Job

Corps funds and sent as an allotment(s) by the Finance Center to the corpsmember's spouse or dependent child(ren) if such spouse or dependent child(ren) resides in any State in the United States.

(d) In the event of a corpsmember's death, any amount due, including the amount of any unpaid readjustment allowance, shall be paid in accordance with provisions of 5 U.S.C. 5582 (designation of beneficiary; order of precedence). (Section 429(c).)

§ 638.525 Clothing.

The Job Corps Director shall establish procedures to provide clothing for all corpsmembers by means of a clothing purchase allowance and by center issue.

§ 638.526 Tort and other claims.

(a) Corpsmembers shall be considered federal employees for purposes of the Tort Claims Act (28 U.S.C. 2671 *et seq.*). (Section 436(a)(3)). In the event a corpsmember is alleged to be involved in the damage, loss, or destruction of the property of others, or of causing personal injury to or the death of other individual(s), claims may be filed with the Center Director by the owner(s) of the property, the injured person(s), or by a duly authorized agent or legal representative of the claimant. The Center Director shall collect all of the facts, including accident and medical reports and the names and addresses of witnesses, and submit the claim for a decision to the DOL Regional Solicitor's Office. All tort claims for \$25,000 or more shall be sent to the Associate Solicitor for Employee Benefits, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(b) Whenever there is loss or damage to persons or property, which is believed to have resulted from operation of a Job Corps center and to be a proper charge against the Federal Government, a claim for such damage may be submitted by the owner(s) of the property, the injured person(s), or by a duly authorized agent of the claimant to the Regional Solicitor, who shall determine if the claim is cognizable under the Tort Claims Act. Claims shall be filed no later than two years from the date of such loss or damage. If it is determined not to be cognizable, the Regional Solicitor shall consider the facts and may settle the claim pursuant to section 436(b) of the Act in an amount not to exceed \$1,500.

(c) The Job Corps may pay claims to corpsmembers for lost, damaged, or stolen property, up to a maximum set by the Job Corps Director when such loss is not due to the negligence of the corpsmember. Corpsmembers shall file claims no later than two years from the

date of such loss. Corpsmembers shall be compensated for losses when they are the result of a natural disaster or when the corpsmember's property is in the protective custody of the Job Corps, which shall be the case when the corpsmember is AWOL. The Job Corps Director shall provide for claims to be filed with regional offices for a determination on the claim. The regional office shall promptly notify the corpsmember and the center of its determination.

§ 638.527 Federal employee's compensation.

(a) Corpsmembers shall be considered federal employees for purposes of Federal employees' compensation (FEC). (Section 436(a)(2).)

(b) Resident corpsmembers shall be considered to be in the "performance of duty" as federal employees from the date they leave their homes and begin authorized travel to their center of assignment until the date of their scheduled arrival at the official travel destination upon the termination from Job Corps. During this period the youths shall be known as corpsmembers, and this period shall constitute their period of enrollment. During this period, resident corpsmembers shall be considered as in performance of duty at all times, during any and all of their activities, 24 hours a day, seven days a week, except as described in paragraph (d) of this section.

(c) Non-resident corpsmembers shall be considered to be "in performance of duty" as federal employees from the time they arrive at any scheduled center activity or program until they leave such activity or program.

(d) No corpsmember shall be considered as being in performance of duty status if he/she is absent without official authorization (AWOL) or after arrival home on administrative leave without allowances.

(e) In computing compensation benefits for disability or death, the monthly pay of a corpsmember shall be deemed that received under the entrance salary for a grade GS-2 federal employee, and 5 U.S.C. 8113 (a) and (b) shall apply to corpsmembers.

(f) Compensation for disability shall not begin to accrue until the day following the date on which the injured corpsmember completes his or her Job Corps termination.

(g) Whenever a corpsmember is injured, develops an occupationally related illness, or dies while in the performance of duty, the Job Corps Director shall ensure that procedures set forth in the DOL Employment Standards Administration regulations at 20 CFR

Chapter I are followed. The Job Corps Director shall ensure that a thorough investigation of the circumstances and a medical evaluation are completed and that required forms are filed with the DOL Office of Workers' Compensation Programs.

§ 638.528 Social Security.

The Act provides that corpsmembers are covered by Title II of the Social Security Act (42 U.S.C. 401 *et seq.*) and shall pay applicable employment taxes (e.g., the Federal Insurance Contributions Act (FICA) tax) on their living and readjustment allowances. (Section 436(a)(1)).

§ 638.529 Income taxes.

The Act provides that corpsmembers are federal employees for the purposes of the Internal Revenue Code of 1954. The Job Corps Director may obtain from tax authorities and provide information to center operators and to the finance center information regarding taxation of corpsmember income.

§ 638.530 Emergency use of personnel, equipment, and facilities.

The Job Corps Director may provide emergency assistance when there is a threat of natural disaster. Corpsmembers may be asked to volunteer their services to help in such cases. The center operator shall arrange that any expenses consequent to such assistance shall be borne, to the extent possible, by the benefiting organization.

§ 638.531 Limitation on the use of corpsmembers in emergency projects.

The Job Corps Director shall develop procedures to safeguard the rights and safety of corpsmembers used in emergency situations. This shall also apply to the use of corpsmembers engaged in and paid for fire suppression activities.

§ 638.532 Annual leave.

The Job Corps Director shall issue procedures to administer the accrual and use of corpsmember leave. Such procedures shall provide that:

(a) Corpsmembers shall accrue annual leave at the rate of one calendar day for each pay period, provided that the corpsmember has been in pay status for a total of eight or more days during the pay period. Accrual time shall begin on the day the corpsmember departs for a center and end on the date of his or her scheduled arrival home or at a place of employment.

(b) Annual leave shall continue to accrue during periods of home, emergency, and administrative leave with pay and shall be suspended only

when the corpsmember is AWOL or on administrative leave without allowances.

(c) Corpsmembers shall not be paid at termination for unused accrued leave.

(d) Corpsmembers may use accrued annual leave at any time subject to approval by the Center Director. Annual leave with transportation at government expense shall be allowed only after the corpsmember has spent 180 days in pay status in Job Corps, and only once per year of enrollment.

(e) Corpsmembers shall not be charged annual leave for travel time to and from home and center by the most direct route. Saturdays, Sundays, and holidays shall not be charged as annual leave.

§ 638.533 Other corpsmember absences.

The Job Corps Director shall develop procedures for authorized corpsmember absences and to account for all absences whether authorized or unauthorized.

§ 638.534 Legal services to corpsmembers.

(a) The Job Corps Director shall develop procedures to afford corpsmembers effective and competent legal representation in criminal and certain civil cases. This shall include assisting corpsmembers in obtaining free or low cost legal assistance, obtaining local attorneys to represent corpsmembers, and paying for such legal services, in accordance with guidelines issued by the Job Corps Director.

(b) Job Corps may compensate attorneys obtained pursuant to paragraph (a) of this section in criminal cases for reasonable expenses. Compensation shall be at the rates no higher than those set forth in the Criminal Justice Act of 1964, as amended [18 U.S.C. 3006A(d)].

§ 638.535 Voting rights.

The Job Corps Director shall develop procedures to enable eligible corpsmembers and staff to vote either locally or by absentee ballot. See also § 638.814(a) through (c) of this part.

§ 638.536 Religious rights.

The right to worship or not worship as he/she chooses shall not be denied to any corpsmember. Religious services may not be held on-center unless the center is so isolated as to make transportation to and from community religious facilities impractical. If religious services are held on-center, no federal funds shall be paid to those who conduct such services. Services shall not be confined to one religious denomination. The center operator shall instruct corpsmembers that

corpsmembers are not obligated by Job Corps to attend such services. See also §§ 638.539(g) and 638.813 of this part.

§ 638.537 Disclosure of information.

(a) *Requests for information.* The Job Corps Director shall develop administrative procedures to respond to requests for information or records pertaining to corpsmembers and such other disclosures as may be necessary.

(b) *Freedom of Information Act—(1) Disclosure.* Disclosure of Job Corps information shall be in accordance with the Freedom of Information Act and shall be handled according to DOL regulations at 29 CFR Part 70.

(2) *Contractors.* Job Corps contractors are not "agencies" for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR Part 70.

(c) *Privacy Act of 1974.* When DOL maintains a system of records covered by the Privacy Act of 1974, or provides by contract for a contractor, such as a screening agency or a contract center operator, to operate by or on behalf of the Job Corps such a system of records to accomplish a Job Corps function, the requirements of the DOL regulations at 29 CFR Part 70a apply to such system or records.

§ 638.538 Disciplinary procedures and appeals.

(a) The center operator shall establish reasonable rules and regulations for corpsmember behavior, in accordance with procedures developed by the Job Corps Director. Such rules shall be established to ensure high standards of behavior and conduct.

(b) The center operator shall develop reasonable sanctions for breaking established rules, in accordance with procedures developed by the Job Corps Director.

(c) The center operator shall ensure that all corpsmembers have the opportunity for due process in disciplinary proceedings, in accordance with procedures developed by the Job Corps Director. Such center procedures, at a minimum, shall include center review boards, and procedures for appealing center decisions to terminate to a regional appeal board designated by the Regional Director (see § 638.407 of this part). The decision of the regional appeal board shall be final agency action.

§ 638.539 Complaints and disputes.

(a) *Center and other deliverer grievance procedures.* Each center operator or other Job Corps deliverer shall establish and maintain a grievance

procedure for complaints about its programs and activities from corpsmembers and other interested parties. A hearing on each complaint shall be conducted, using the established grievance procedure, within 30 days of filing of the complaint and a decision on the complaint shall be made by the Center Director or with the knowledge of the Center Director not later than 60 days after the filing of the complaint. Except for a complaint alleging fraud or criminal activity, complaints shall be made within one year of the alleged occurrence. (Section 144(a).)

(b) *Federal review of corpsmember grievances.* Where a corpsmember or a person denied enrollment has exhausted the center or other deliverer grievance procedure established pursuant to paragraph (a) of this section, the corpsmember may appeal the decision to the regional appeal board. The regional appeal board shall investigate the appeal and determine within 120 days after receiving the appeal whether to reverse, affirm, or remand the decision. The decision of the regional appeal board shall be final agency action. (Section 144(c).)

(c) *Federal review of non-corpsmember grievances.* (1) Where the grievance or complaint is made by an interested party other than a corpsmember, should the deliverer fail to provide a decision as required in paragraph (a) of this section, the complainant may then request from the Regional Director a determination whether reasonable cause exists to believe that the Act or this part has been violated. The request shall be filed no later than 10 days from the date on which the complainant should have received a decision pursuant to paragraph (a) of this section, and shall describe with specificity the facts and the proceedings (if any) below.

(2) The Regional Director shall act within 90 days of receipt of the request and where there is reasonable cause to believe the Act or this part has been violated shall direct the deliverer to issue a decision adjudicating the dispute pursuant to the deliverer grievance procedures. The Regional Director's action is not final agency action on the merits of the dispute and therefore is not appealable under the Act (see sections 144(c) and 166(a) of the Act). If the deliverer does not comply with the Regional Director's order within 60 days, the Regional Director may impose a sanction on the deliverer for failing to issue a decision.

(d) *Failures to comply with the Act.* Where DOL has reason to believe that

the center operator or other deliverer is failing to comply with the requirements of the Act, the Regional Director shall investigate the allegation or belief and determine within 120 days after receiving the complaint whether such allegation or complaint is true. As the result of such a determination, the Regional Director may:

(1) Direct the deliverer to handle a complaint through the grievance procedures established under paragraph (a) of this section; or

(2) Investigate and determine whether the deliverer is in compliance with the Act and this part. If the Regional Director determines that the deliverer is not in compliance with the Act or this part, the appropriate sanctions set forth in section 164 of the Act shall be applied, subject to paragraph (e) or (f) of this section, as appropriate. (Section 163(b) and (c).)

(e) *Contract disputes.* A dispute between DOL and a Job Corps contractor shall be handled only pursuant to the Contract Disputes Act and 41 CFR Part 29-60.

(f) *Inter-agency disputes.* A dispute between DOL and a federal agency operating a center shall be handled only pursuant to the interagency agreement with that agency for the operation of the center.

(g) *Nondiscrimination.* Nondiscrimination-related requirements, procedures, complaint processing, and compliance reviews are governed by the provisions of 29 CFR Parts 31 and 32 and administered by the Directorate of Civil Rights, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor. Prohibited bases of discrimination are set forth at section 167 of the Act. See also § 638.813(a) of this part, regarding nondiscrimination. (Section 167.)

§ 638.540 Cooperation with agencies and institutions.

The Job Corps Director shall develop guidelines for the national office's, the regional offices', and for deliverers' maintenance of cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training agencies.

§ 638.541 Job Corps training opportunities.

The Job Corps Director shall develop policies and requirements which will enable JTPA grantees, recipients, subgrantees, and subrecipients to participate in the Job Corps program through nonfinancial agreements or through the concept of buy-in (i.e., the

purchase from a Job Corps center of services and/or training authorized under a grantee's, recipient's, subgrantee's, subrecipient's Title of the Act). (Section 427(b).)

Subpart F—Applied Vocational Skills Training (VST)

§ 638.600 Applied vocational skills training (VST) through work projects.

(a)(1) The Job Corps Director shall establish procedures for administering applied vocational skills training (VST) projects; such procedures shall include funding and reporting requirements, granting approvals, and reviewing requirements.

(2) Each applied VST project shall be submitted to the Regional Director for approval. The annual applied VST plan described in paragraph (c) of this section shall be submitted to the Regional Director for approval.

(b) Applied VST may be provided in an actual working setting for training corpsmembers in the construction trades. This shall involve authorized construction or other projects that result in finished facilities or products. Centers may also perform applied VST public service projects for nearby communities and capital improvements for other Job Corps centers.

(c) Applied VST shall be the major vehicle for the training of corpsmembers in the construction and related trades. In each year, each center operator shall develop an annual applied VST plan for the coming year. In order to ensure that maximum training opportunities are available to corpsmembers, the center vocational instructor (and/or the national training contractor, when applicable) shall participate in the planning and shall approve each project which involves his/her particular trade. Applied VST projects shall be planned in such a manner as to give priority to on-center rehabilitation and construction needs. The Job Corps Director shall establish annual funding levels to support applied VST programs and shall establish specific policies on limitation, documentation, and reporting requirements relating to applied VST programs.

§ 638.601 Applied VST budgeting.

The Job Corps Director shall establish procedures to ensure that center operators maintain applied VST project funds as a separate center budget line item and maintain strict accountability for the use or nonuse of such funds. The approval of the Job Corps national office is necessary to transfer applied VST project funds to any other center budget category or program activity.

Subpart G—Experimental, Research, and Demonstration Projects

§ 638.700 Experimental, research, and demonstration projects.

(a) The Job Corps Director, at his or her discretion, may undertake experimental, research, or demonstration projects for the purpose of promoting greater efficiency and effectiveness in the Job Corps program in accordance with section 433 of the Act.

(b) The Job Corps Director may arrange for projects under this section to be undertaken jointly with other federal or federally assisted programs.

(c) The Job Corps Director is authorized to waive any provision of this part that the Job Corps Director finds would prevent the implementation of experimental, research, or demonstration project elements essential to a determination of their feasibility and usefulness.

Subpart H—Administrative Provisions

§ 638.800 Program management.

(a) The Job Corps Director shall establish and use internal program management procedures sufficient to prevent fraud or program abuse. The Job Corps Director shall ensure that sufficient auditable and otherwise adequate records are maintained to support the expenditure of all funds under the Act.

(b) The Job Corps Director shall provide guidelines for center staffing levels and qualifications. The guidelines shall adhere to standard levels of professional education and experience which are accepted generally within the fields of education and counseling.

§ 638.801 Staff training.

The Job Corps Director shall establish guidelines for necessary training for national office, regional office, and deliverer staff.

§ 638.802 Corpsmember records management.

The Job Corps Director shall develop guidelines for a system of maintaining ongoing records for each corpsmember during enrollment and for the disposition of such records after termination.

§ 638.803 Safety.

(a) The Job Corps Director shall establish procedures to ensure that corpsmembers are not required or permitted to work, to be trained, to reside, or to receive services in buildings or surroundings or under conditions that are unsanitary, hazardous, or lack

proper ventilation. Whenever corpsmembers are employed or trained for jobs, they shall be assigned to such jobs or training in accordance with appropriate health and safety practices.

(b) The Job Corps Director shall develop a procedure to provide appropriate protective clothing for corpsmembers in work or training.

(c) The Job Corps Director shall ensure that safety and health inspections of every work place and training area are conducted at least annually pursuant to the DOL Occupational Safety and Health Administration's regulations 29 CFR Part 1960, Subpart D.

§ 638.804 Environmental health.

The Job Corps Director shall provide guidelines for proper environmental health conditions.

§ 638.805 Security and law enforcement.

(a) The Job Corps Director shall provide guidelines to protect the security of corpsmembers, staff, and property on-center on a 24-hours-a-day, 7-days-a-week basis.

(b)(1) All property which would otherwise be under exclusive federal legislative jurisdiction shall be considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement as long as a center is operated on such property. This extends to portions of the property (e.g., housing and recreational facilities) in addition to the portions of the property used as the center or training facility.

(2) The Job Corps Director shall ensure that centers on property under concurrent federal-State jurisdiction establish agreements with federal, State and local law enforcement agencies to enforce criminal laws on such property. (Section 435(d).)

(c) The Job Corps Director shall develop procedures to ensure that any searches of a corpsmember's personal area or belongings for unauthorized goods follow applicable right-to-privacy laws.

§ 638.806 Property management and procurement.

The Job Corps Director shall develop procedures to establish and maintain a system for acquisition, protection, preservation, maintenance, and disposition of Job Corps real and personal property, and services so as to maximize its usefulness and to minimize operating, repair, and replacement costs.

§ 638.807 Imprest and petty cash funds.

Federally operated centers shall establish auditable imprest funds.

Contract centers shall establish auditable petty cash funds. The Job Corps Director shall develop procedures to ensure the security of and accountability for imprest and petty cash funds.

§ 638.808 Center financial management and reporting.

The Job Corps Director shall establish procedures to ensure that each center operator and each subcontractor maintain a financial management system that will provide accurate, complete, and current disclosures of the financial results of Job Corps operations, and will provide sufficient data for effective evaluation of program activities. Fiscal accounts shall be maintained in a manner that ensures timely and accurate reporting as required by the Job Corps Director.

§ 638.809 Audit.

(a) The Secretary of Labor, the DOL Office of Inspector General, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Job Corps deliverers and their subcontractors that are pertinent to the Job Corps program for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) The Secretary shall, with reasonable frequency, survey, audit, or examine, or arrange for the survey, audit, or examination of Job Corps deliverers, or their subcontractors using federal auditors or independent public accountants. Such surveys, audits, or examinations normally shall be conducted annually but not less than once every two years. The DOL Office of Inspector General shall be responsible for scheduling surveys, audits, or examinations of Job Corps deliverers, and their subcontractors.

§ 638.810 Reporting requirements.

The Job Corps Director shall establish procedures to ensure timely and complete reporting of such program information as is necessary to maintain accountability for the Job Corps program and funding.

§ 638.811 Review and evaluation.

The Job Corps Director shall establish adequate program management to provide continuous examination of the performance of the components of the program.

§ 638.812 State and local taxation of Job Corps deliverers.

The Act provides that transactions conducted by a private for-profit deliverer or a nonprofit deliverer in

connection with the deliverer's operation of a center or other Job Corps program or activity shall not be considered as generating gross receipts. Such deliverer shall not be liable, directly or indirectly, to any State or subdivision thereof (nor to any person acting on behalf thereof) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such deliverer for operating a center or other Job Corps program, or activity. Such deliverer shall not be liable to any State or subdivision thereof to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity. (Section 437(c).)

§ 638.813 Nondiscrimination; nonsectarian activities.

(a) *Nondiscrimination.* Center operators and other deliverers, and subcontractors of center operators and other deliverers, shall comply with the nondiscrimination provisions of section 167 of the Act and regulations implementing section 167 (29 CFR Parts 31 and 32). See also § 638.539(g) of this part, regarding complaints. For the purposes of section 167 of the Act, corpsmembers shall be considered as the ultimate beneficiaries of federal financial assistance. (Section 167.)

(b) *Nonsectarian activities.* Corpsmembers shall not be employed or trained on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship. (Section 167(a)(3).)

§ 638.814 Lobbying; political activities; unionization.

No funds provided under the Act may be used in any way:

(a) To attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress;

(b) To attempt to influence in any manner a member of a State or local legislature to favor or oppose any legislation or appropriation by such legislature;

(c) For any activity which involves political activities; or

(d) For any activity which will assist, promote, or deter union organizing. (Sections 141(1) and 143(c)(1).)

§ 638.815 Charging fees.

No person or organization shall charge an individual a fee for the

placement of such individual in or to a training program under the Act. (Section 141(j).)

**PART 636—COMPLAINTS,
INVESTIGATIONS AND HEARINGS**

4. In Part 636, the Authority citation is revised to read as follows:

Authority: 29 U.S.C. 1579(a).

§ 636.1 [Amended]

5. Section 636.1 is amended by removing from the first sentence in paragraph (a) the term "Title IV" and inserting in lieu thereof the phrase "Title IV (except Part B)".

**PARTS 675, 676, 677, 678, 679, 680,
685, 688, AND 689 [REMOVED]**

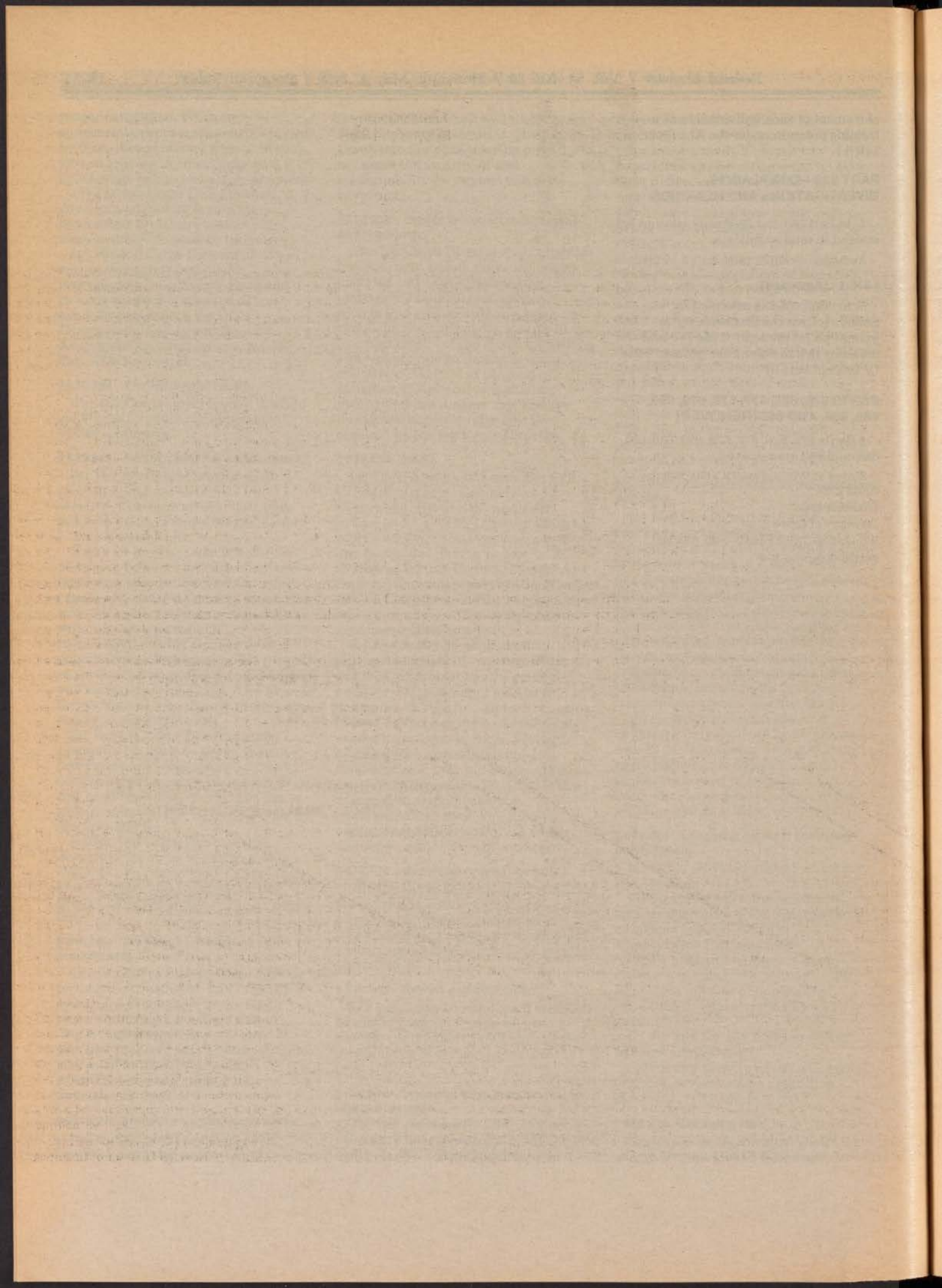
6. Parts 675, 676, 677, 678, 679, 680, 685, 688, and 689 are removed.

Signed at Washington, DC, this 26th day of April, 1989.

Elizabeth Dole,
Secretary of Labor.

[FR Doc. 89-10489 Filed 5-3-89; 8:45 am]

BILLING CODE 4510-30-M



Indian Education Regulations

Thursday
May 4, 1989

Part IV

Department of Education

34 CFR Part 251

Indian Education; Formula Grants to
Local Educational Agencies; Final
Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 251

RIN 1810-AA43

Indian Education; Formula Grants to Local Educational Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Indian Education formula grant program to implement the provisions of the Indian Education Act of 1988. The regulations now include as eligible applicants (under certain circumstances) schools operated by the Bureau of Indian Affairs (BIA) and clarify the requirements for including children in the applicant's count of Indian students to generate funds under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Wright or Ms. Julia Lesceux, Office of Indian Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 20202-6139. Telephone (202) 732-1938.

SUPPLEMENTARY INFORMATION: The Indian Education formula grant program was amended and reauthorized by Part C of Title V of Pub. L. 100-297 (Indian Education Act of 1988; the Act). The Act subsequently was amended again by Pub. L. 100-427.

Under section 5312(b) of the Act, formula grants may be awarded to local educational agencies, certain tribal schools, and, under certain circumstances, schools operated by the BIA. Except where noted in these final regulations, the term "LEA" includes tribal schools and schools operated by the BIA.

On November 16, 1988 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the *Federal Register* (53 FR 46412-46414). Except for technical revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, four parties

submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Section 251.20

Comment: A commenter recommended that § 251.20 be amended to state that 50 percent of the members of the parent committee must be Indian.

Discussion: The proposed regulations clarified an exception to the parent committee requirement, but did not address the requirement itself. The Department cannot issue final substantive changes to provisions that were not included in the Notice of Proposed Rulemaking and, therefore, were not made open to public comment generally. However, the Department appreciates the suggestion and will consider it for future rulemaking on this provision.

Changes: None.

Section 251.22

Comments: One commenter proposed that the period during which 506 forms may be obtained for students included in the Indian student count be extended through June of the school year in which the count is taken. The commenter felt the additional time would be needed in those instances in which State and Federal desegregation guidelines prohibit a more timely completion of annual student counts.

Two commenters recommended that the student count period be extended beyond the 30-day period proposed in the NPRM. One commenter proposed that the count period start with the beginning of the school year and continue until the application deadline date. The second commenter proposed that the count period be extended to one school fiscal year and that the count be an aggregate or cumulative count to conform with school finance plans that were designed to ensure equity in the distribution of educational resources.

Two commenters recommended that the former § 251.22, which described application content requirements, be retained because most applicants and grantees refer to the program regulations for questions concerning application and project administration requirements. The commenters noted that, although the requirements originally described in § 251.22 initially must be addressed during the application process most of them must be implemented and monitored throughout the grant period. It was felt they would be more accessible if they were to be retained in the regulations that contain all other grant requirements.

The commenters said that the Department might not limit application content requirements to those contained in the authorizing legislation and that, therefore, potential applicants may not be able to anticipate the requirements.

Discussion: The Department recognizes that the student count process in very large school districts and in districts that are required to follow special procedures under desegregation guidelines may take a long period of time to complete. However, the Department must receive completed student counts by early spring so that it can calculate award amounts and issue awards in sufficient time to permit implementation of projects by the beginning of the next school year. This schedule would permit LEAs to know the amount of their grant awards so that they may engage staff and otherwise plan for projects in a timely manner.

Since the Department uses all counts in determining LEA allocations nationally, some restrictions on the count period are necessary to ensure equity in the distribution of funds. Allowing LEAs to count children at any time during the school year until the application submission date, or later, could result in some children being counted by more than one district. If aggregate or cumulative counts are used, some children may be counted more than once by a district. These duplicated counts would result in misallocations of the funds available.

The former § 251.22 was deleted in the NPRM, because the information collection requirements in that section are either statutory or based on the regulations. The application package does not contain requirements beyond those in the statute and regulations. Therefore, the Secretary considers the inclusion of that section in the regulations as duplicative and unnecessary.

Changes: None.

Section 251.43

Comments: One commenter suggested that the term "objectives" be used in lieu of the term "goals" to be more consistent with the terminology used and the level of planning undertaken by the projects funded under the program. The commenter said that most of the projects are small and operate under relatively short-term objectives rather than long-term goals.

The commenter also questioned whether the section's requirement to amend applications would apply to subsequent applications for the same activity. The commenter felt that unless

the section refers to subsequent applications, the provision will be difficult to enforce. This observation was based on the fact that many projects are funded with new grants annually, evaluations frequently are conducted at the end of the grant period, and the results of the evaluations are not due to the Department until after the subsequent grant period has begun.

Discussion: The Department agrees that the use of the term "objectives" would be consistent with the terminology contained in other relevant regulations that apply to grantees. For example, §§ 75.111(c) and 75.590(a), respectively, of the Education Department General Administrative Regulations (EDGAR) discuss an applicant's description of project objectives and a grantee's evaluation of its progress in achieving those objectives.

The provision in § 251.43 is intended to apply to the grant agreement, which includes the approved application, that is in effect at the time the evaluation information is received by the grantee.

Changes: Section 251.43 has been revised to use the term "objectives" instead of the term "goals."

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 251

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

Dated: March 27, 1989.

Lauro F. Cavazos,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.060 Development Awards)

Program—Indian Education—Local Educational Agencies and Tribal Schools)

The Secretary amends Part 251 of Title 34 of the Code of Federal Regulations as follows:

1. The title of Part 251 is revised to read as follows:

PART 251—INDIAN EDUCATION— FORMULA GRANTS TO LOCAL EDUCATIONAL AGENCIES

2. The authority citation for Part 251 is revised to read as follows:

Authority: 25 U.S.C. 2601–2606, unless otherwise noted.

§ 251.1 [Amended]

3. Section 251.1 is amended by removing the words "and Tribal Schools" in the section heading and text and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2601)

4. Section 251.2 is revised to read as follows:

§ 251.2 Who is eligible for assistance under this program?

(a) An LEA is eligible for assistance under this program.

(b)(1) An LEA other than a tribal school or a Bureau school is entitled to receive a grant only if the number of Indian children enrolled in the LEA's schools is either—

- (i) At least 10; or
- (ii) At least one-half of the total enrollment for that agency.

(2) However, an LEA may apply without regard to the enrollment requirements of paragraph (b)(1) of this section if it is located—

- (i) In Alaska, California, or Oklahoma; or
- (ii) On, or in proximity to, an Indian reservation.

(c) An LEA that is a Bureau school is eligible only if funds are available in accordance with section 5312(b)(3) of the Act.

(Authority: 25 U.S.C. 2602 (a), (b))

5. Section 251.3 is amended by revising paragraph (b)(2) introductory text, redesignating paragraph (b)(2)(iii) as (b)(2)(iv), adding a new paragraph (b)(2)(iii), and revising redesignated paragraph (b)(2)(iv) and the authority citation to read as follows:

§ 251.3 What regulations apply to this program?

- (b) * * *
- (2) However, the following provisions of this part do not apply to tribal schools or Bureau schools:
- * * *

(iii) Sections 251.31 and 251.32 relating to free public education.

(iv) Sections 251.40–251.42 relating to the maintenance of effort required for LEAs.

(Authority: 25 U.S.C. 2601–2606, 2651)

6. The authority citation for § 251.4 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2606)

7. Section 251.10 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 251.10 What types of projects may be funded?

(a) The Secretary may fund applications proposing the—

- (1) Establishment, maintenance, or operation of projects specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children; or
- (2) Training of counselors at the applicant's school in counseling techniques relevant to the treatment of alcohol and substance abuse.

(Authority: 25 U.S.C. 2603)

§ 251.20 [Amended]

8. Section 251.20 is amended by adding the words "—other than a tribal school or a Bureau School—" after the word "LEA" in paragraph (a) and by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2604(b)(2)(B), 2651)

§ 251.21 [Amended]

9. In § 251.21, paragraph (b) is amended by removing the words "other than school administrators or officials" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2604(b)(2)(B)(i), 2651)

10. Section 251.22 is revised.

§ 251.22 How does the LEA determine the student count?

(a) Before including a student in the count of Indian children to generate funds under this part, an LEA shall—

(1) Establish a date or a period, not exceeding 30 days, during which the LEA conducts the count;

(2) Determine that the child was enrolled in the LEA's elementary or secondary schools on the count date or during the count period;

(3) Determine that the child received a free public education in the LEA's schools on the count date or during the count period; and

(4) Obtain for each child included in the count the student certification form prescribed by the Secretary.

(b) Before including a student in the count of Indian children to generate funds under this part, the LEA shall determine that the student certification form referred to in paragraph (a)(4) of this section includes, at a minimum:

- (1) The student's name;
- (2) The name of the eligible Indian tribe, band, or group of which the student, the parent, or the grandparent is a member, as defined by the tribe, band, or group; and
- (3) The parent's signature and date.

(c) The LEA may include in the count a student whose student certification form does not have the parent's signature and date, provided that the parent's signature and date are obtained within 90 days of the start of the grant period for which the student is counted to generate funds under this part.

(Approved by the Office of Management and Budget under control number 1810-0031)

(Authority: 25 U.S.C. 2602(b), 2604(d), 2651)

§ 251.30 [Amended]

11. In § 251.30, paragraph (a) is amended by removing "303(a), Part A", and adding, in its place, "5312(b)"; paragraph (b)(2) is amended by removing "303(a)(2)(C), Part A", and adding, in its place, "5312(b)(2)(C)"; and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(b), 2606)

12. In § 251.31, the undesignated introductory text is amended by removing "303(a), Part A", and adding, in its place, "5312(b)", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(b), 2651)

§ 251.32 [Amended]

13. In § 251.32, paragraph (a) is amended by removing "§ 251.30 and", paragraph (d)(2) is amended by removing "303(a), Part A", and adding, in its place, "5312(b)", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(b), 2651)

§ 251.40 [Amended]

14. Section 251.40 is amended by removing the words "does not make" in paragraph (a) and adding, in their place, the words "makes full"; removing the word "unless" in paragraph (a) and adding, in its place, the word "if"; redesignating paragraphs (b) and (c) as (d) and (e), respectively; adding new paragraphs (b) and (c); and revising the authority citation to read as follows:

§ 251.40 What is the maintenance of effort requirement?

(b) The requirement of paragraph (a) of this section does not apply to an LEA that is a tribal school or a Bureau school.

(c) Subject to the granting of a waiver under § 251.41, if the Secretary determines that the LEA has failed to maintain the combined fiscal effort as required under paragraph (a) the Secretary reduces the LEA's award in the exact proportion by which the LEA failed to meet the combined fiscal effort requirement.

(Authority: 25 U.S.C. 2605(c), 2651)

§ 251.41 [Amended]

15. The authority citation for § 251.41 is revised to read as follows:

(Authority: 25 U.S.C. 2605(c))

§ 251.42 [Amended]

16. The authority citation for § 251.42 is revised to read as follows:

(Authority: 25 U.S.C. 2605(c))

17. A new § 251.43 is added to read as follows:

§ 251.43 How must a grantee use the results of its evaluations?

(a) If an evaluation under section 5314(a)(4) of the Act shows that a project is not making substantial progress toward meeting the objectives of the project and this part, the grantee shall amend its application in accordance with section 5314(c) of the Act.

(b) The amendments to the application must include changes that will enable the grantee to meet those objectives.

(Authority: 25 U.S.C. 2604 (a)(4), (c))

§ 251.50 [Amended]

18. Section 251.50 is amended by adding the words "in accordance with § 251.22 and" after the words "Indian students" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2604(d))

19. A new § 251.51 is added to read as follows:

§ 251.51 How does the Secretary determine a grantee's compliance with the student certification requirements?

Periodically, the Secretary reviews a grantee's records to determine, for the current fiscal year and for prior fiscal

years for which the grantee is required to maintain records, if—

(a) The requirements in § 251.22 were met;

(b) A certification form that meets the requirements of § 251.22 is on file for each child included by the grantee in the count of children to generate funds under this part; and

(c) Each child counted by the grantee is otherwise eligible to be counted under this part.

(Approved by the Office of Management and Budget under control number 1810-0031)

(Authority: 25 U.S.C. 2601-2606)

20. A new § 251.52 is added to read as follows:

§ 251.52 What action does the Secretary take if a grantee fails to meet the student certification requirements?

(a) If the Secretary determines under § 251.51 that a grantee is not in compliance with the student certification requirements, the grantee shall repay to the Department the amount of funds improperly generated. The Secretary may—

(1) Collect the funds awarded for each child inappropriately counted in the fiscal year or years at issue by—

(i) Demanding direct repayment from the grantee;

(ii) Reducing the grantee's current grant award where the Secretary's determination under paragraph (a) of the section concerns the current fiscal year; or

(iii) Offsetting the equivalent amount from the grantee's award for a fiscal year following the determination; and

(2) For one to three years following that determination, require the grantee to submit with its application for funds under this part a verification by an independent auditor that student certification forms have been completed and maintained by the grantee for each child included in the count in the application.

(b) In applying an administrative offset under § 251.52(a)(1)(iii), the Secretary uses the procedures contained in 34 CFR Part 30.

(Approved by the Office of Management and Budget under control number 1810-0031)

(Authority: 25 U.S.C. 2601-2606)

[FR Doc. 89-10596 Filed 5-3-89; 8:45 am]

BILLING CODE 4000-01-M

48 CFR Part 13

Thursday
May 4, 1989

Part V

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Part 13

**Federal Acquisition Regulation (FAR);
Price Reasonableness Threshold;
Proposed Rule**

Department of Defense
General Services
Administration
National Archives and
Records Administration

Section 552 of the
Executive Order 11652
Presidential Decree



DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 13****Federal Acquisition Regulation (FAR);
Price Reasonableness Threshold**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision in FAR 13.106 (a), (b), and (c), that establishes the threshold at which price reasonableness must be verified and quotations solicited from a reasonable number of sources. The revision proposes to increase the threshold from \$1,000 to 10 percent of the small purchase limitation (presently at \$25,000).

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 3, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89-32 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 89-32.

SUPPLEMENTARY INFORMATION:**A. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Existing regulations address the establishment of a special category of set-asides, identified as small business-small purchase set-asides, for acquisitions of supplies or services that have an anticipated dollar value of \$25,000 or less. This proposed rule does not affect those set-asides. It merely reduces the administrative cost of low dollar value set-asides. However, comments concerning the impact of this rule are invited from small businesses or other interested parties. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-32) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: April 27, 1989.

Harry S. Rosinski,
Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Part 13 is amended as set forth below:

**PART 13—SMALL PURCHASE AND
OTHER SIMPLIFIED PURCHASE
PROCEDURES**

1. The authority citation for 48 CFR Part 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

13.106 [Amended]

2. Section 13.106 is amended by removing in paragraph (a) heading, (a)(4), and paragraphs (b) and (c) headings the figure "\$1,000" and inserting in each place "10 percent of the small purchase limitation."

[FR Doc. 89-10763 Filed 5-3-89; 8:45 am]

BILLING CODE 6820-JC-M

STATEMENT OF DEBIT

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

RECEIPTS
ADMINISTRATION

REGISTERED FEDERAL

Thursday
May 4, 1989

Part VI

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

30 CFR Part 845

Surface Coal Mining and Reclamation
Operations; Permanent Program
Inspections and Enforcement Procedures;
Civil Penalties; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 845

RIN 1029-AB28

Surface Coal Mining and Reclamation Operations; Permanent Program Inspections and Enforcement Procedures; Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations which allow OSMRE to use money collected from payment of Federal civil penalties levied under section 518 of the Surface Mining Control and Reclamation Act of 1977 (Act) to reclaim lands that have been mined, abandoned or left inadequately reclaimed since passage of the Act. The regulations are being amended to comply with the Department of the Interior Appropriation Act for fiscal year 1989 to allow use of these funds until expended.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, PG, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-7952 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Final Rule
- III. Procedural Matters

I. Background

A detailed discussion of the regulation which implemented the use of civil penalty moneys and explains the Post Act Reclamation program may be found at 53 FR 16016, May 4, 1988.

Congress, in the Department of the Interior Appropriations Act for fiscal year 1989 authorized the Secretary of the Interior to utilize money collected pursuant to the payment of civil penalties under section 518 of the Act to reclaim lands adversely affected by coal mining practices after August 3, 1977, to remain available until expended (Pub. L. 100-446). The appropriations language provides in part:

*** Provided, That notwithstanding any other provision of law, the Secretary of the Interior, pursuant to regulations, may utilize directly or through grants to States, moneys collected in fiscal year 1989 pursuant to the assessment of civil penalties under section

518 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), to reclaim lands adversely affected by coal mining practices after August 3, 1977, to remain available until expended. ***

II. Discussion of Final Rule

The reader is referred to a detailed discussion of 30 CFR 845.21 at 53 FR 16016, May 14, 1988, for an explanation of the rule implementing Pub. L. 100-202, which allows use of civil penalty money for reclamation of post 1977 sites.

The present regulation amends 30 CFR 845.21(a) to implement the intent of Congress which authorizes the use of civil penalties collected in Fiscal 1989 until such funds are expended.

III. Procedural Matters*Federal Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local government. Furthermore, the rule produces no adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE prepared an environmental assessment (EA) for the May 4, 1988 regulation (53 FR 16016) that implemented the use of civil penalty moneys for post act reclamation. OSMRE determined at that time that there were no significant adverse impacts on the quality of the human environment that required preparation of an environmental impact statement within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A "Finding of No Significant Impact" (FONSI) was issued and included in the OSMRE administrative record at the address specified previously (see "ADDRESSES"). OSMRE has examined the rule being adopted here and

determined that the analysis included in the EA prepared for the May 4, 1988, rule remains applicable. OSMRE has prepared a FONSI for the final rule reaffirming the finding that there will not be any significant adverse environmental impacts.

Administrative Procedure Act

This regulation is exempt from the public notice rulemaking requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(B). Notice and comment on the regulation are unnecessary since the regulation merely adopts without policy alternatives a technical change provided by Congress in the Agency's Appropriation Act for FY '89.

Author

The principal author of this rule is Raymond E. Aufmuth, PG, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-7952 (Commercial or FTS).

List of Subjects in 30 CFR Part 845

Administrative practice and procedure; Law enforcement; Penalties; Reporting and recordkeeping requirements; Surface mining; Underground mining.

Accordingly 30 CFR Part 845 is amended as follows:

Dated: March 5, 1989.

James E. Cason,
Acting Assistant Secretary, Land and Minerals Management.

PART 845—CIVIL PENALTIES

1. The authority citation for Part 845 is revised to read:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, Pub. L. 100-34; Pub. L. 100-202, and Pub. L. 100-446.

2. In section 845-21, paragraph (a) is revised to read as follows:

§ 845.21 Use of civil penalties for reclamation.

(a) To the extent authorized in the applicable annual appropriations act or other relevant statute, the Director of OSMRE may utilize money collected by the United States pursuant to the assessment of civil penalties under section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977, until such funds are expended.

[FR Doc. 89-10699 Filed 5-3-89; 8:45 am]
BILLING CODE 4310-05-M

Reader Aids

Federal Register

Vol. 54, No. 85

Thursday, May 4, 1989

INFORMATION AND ASSISTANCE

Federal Register

| | |
|---|----------|
| Index, finding aids & general information | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections to published documents | 523-5237 |
| Document drafting information | 523-5237 |
| Machine readable documents | 523-5237 |

Code of Federal Regulations

| | |
|---|----------|
| Index, finding aids & general information | 523-5227 |
| Printing schedules | 523-3419 |

Laws

| | |
|---|----------|
| Public Laws Update Service (numbers, dates, etc.) | 523-6641 |
| Additional information | 523-5230 |

Presidential Documents

| | |
|--|----------|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the Presidents | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

The United States Government Manual

| | |
|---------------------|----------|
| General information | 523-5230 |
|---------------------|----------|

Other Services

| | |
|---|----------|
| Data base and machine readable specifications | 523-3408 |
| Guide to Record Retention Requirements | 523-3187 |
| Legal staff | 523-4534 |
| Library | 523-5240 |
| Privacy Act Compilation | 523-3187 |
| Public Laws Update Service (PLUS) | 523-6641 |
| TDD for the deaf | 523-5229 |

FEDERAL REGISTER PAGES AND DATES, MAY

| | |
|------------------|---|
| 18465-18640..... | 1 |
| 18641-18872..... | 2 |
| 18873-19152..... | 3 |
| 19153-19342..... | 4 |

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

| | |
|-----------------------|-------|
| Proclamations: | |
| 5961..... | 18859 |
| 5962..... | 18861 |
| 5963..... | 18863 |
| 5964..... | 18865 |
| 5965..... | 18867 |
| 5966..... | 19153 |

Executive Orders:

| | |
|----------------------------------|-------|
| 12154 (Amended by EO 12678)..... | 18872 |
| 12320 (Revoked by EO 12677)..... | 18869 |
| 12654 (Revoked by EO 12676)..... | 18639 |
| 12677..... | 18869 |
| 12678..... | 18872 |

5 CFR

| | |
|----------|-------|
| 213..... | 18873 |
| 359..... | 18873 |
| 536..... | 18873 |

7 CFR

| | |
|-----------|-------|
| 2..... | 18641 |
| 29..... | 18880 |
| 210..... | 18465 |
| 220..... | 18465 |
| 278..... | 18641 |
| 955..... | 18647 |
| 1942..... | 18881 |
| 1951..... | 18883 |

Proposed Rules:

| | |
|-----------|-------|
| 29..... | 18905 |
| 318..... | 18528 |
| 989..... | 18664 |
| 1079..... | 18979 |
| 1131..... | 18665 |
| 1139..... | 18666 |

8 CFR

| | |
|----------|-------|
| 100..... | 18648 |
| 103..... | 18648 |
| 280..... | 18648 |

9 CFR

| | |
|----------|-------|
| 201..... | 18713 |
|----------|-------|

10 CFR

| | |
|---------|-------|
| 50..... | 18649 |
|---------|-------|

12 CFR

| | |
|-----------|-----------------------------------|
| 549..... | 19155 |
| 569a..... | 19155 |
| 569c..... | 19155 |
| 701..... | 18466, 18468, 18470, 18471, 18473 |
| 703..... | 18471 |
| 790..... | 18473 |
| 792..... | 18473 |
| 796..... | 18473 |

13 CFR

| | |
|------------------------|-------|
| Proposed Rules: | |
| 120..... | 18529 |

14 CFR

| | |
|---------|-------------|
| 71..... | 19157-19159 |
| 75..... | 19160 |

Proposed Rules:

| | |
|---------|----------------------------|
| 25..... | 18824 |
| 39..... | 18486 |
| 71..... | 18487, 18488, 18667, 18668 |

Proposed Rules:

| | |
|---------|---------------------|
| 21..... | 18530, 18534 |
| 23..... | 18530 |
| 25..... | 18534 |
| 39..... | 18536 |
| 71..... | 18538, 19195, 19196 |

15 CFR

| | |
|----------|-------|
| 774..... | 18489 |
| 779..... | 18489 |
| 799..... | 18489 |

16 CFR

| | |
|--------|-------|
| 3..... | 18883 |
|--------|-------|

Proposed Rules:

| | |
|----------|---------------------|
| 13..... | 18539, 18541, 18544 |
| 401..... | 18906 |

18 CFR

| | |
|----------|-------|
| 271..... | 19161 |
|----------|-------|

20 CFR

| | |
|----------|-------|
| 10..... | 18834 |
| 416..... | 19162 |

Proposed Rules:

| | |
|----------|-------|
| 626..... | 19316 |
| 636..... | 19316 |
| 638..... | 19316 |
| 675..... | 19316 |
| 676..... | 19316 |
| 677..... | 19316 |
| 678..... | 19316 |
| 679..... | 19316 |
| 680..... | 19316 |
| 684..... | 19316 |
| 685..... | 19316 |
| 688..... | 19316 |
| 689..... | 19316 |

21 CFR

| | |
|----------|-------|
| 103..... | 18651 |
| 165..... | 18651 |
| 177..... | 19283 |
| 520..... | 19283 |

22 CFR

| | |
|-----------|-------|
| 1300..... | 18886 |
|-----------|-------|

23 CFR

| | |
|------------------------|-------|
| Proposed Rules: | |
| 658..... | 19196 |

| | | | |
|------------------------|-------------------------------|------------------------|-------------------------------|
| 24 CFR | | 45 CFR | |
| 990..... | 18889 | Proposed Rules: | |
| 26 CFR | | 233..... | 19197 |
| 1..... | 19165, 19283 | 47 CFR | |
| 35a..... | 18713 | 69..... | 18654 |
| 602..... | 19165, 19283 | 73..... | 18506, 18507, 18889, 18890 |
| 28 CFR | | 48 CFR | |
| Proposed Rules: | | 31..... | 18507 |
| 75..... | 18907 | Proposed Rules: | |
| 29 CFR | | 13..... | 19339 |
| 2200..... | 18490 | 31..... | 18634 |
| Proposed Rules: | | 52..... | 18558, 18631 |
| 1910..... | 18798 | 552..... | 18912 |
| 30 CFR | | 49 CFR | |
| 845..... | 19342 | 173..... | 18820 |
| 32 CFR | | 178..... | 18820 |
| 518..... | 18653 | 571..... | 18890 |
| 706..... | 18651, 18652 | 580..... | 18507-18516 |
| Proposed Rules: | | Proposed Rules: | |
| 98a..... | 18547 | 571..... | 18912 |
| 33 CFR | | 50 CFR | |
| 3..... | 19166 | 216..... | 18519 |
| 100..... | 18653, 18654, 19166, 19167 | 611..... | 18903 |
| 165..... | 19168 | 661..... | 19185 |
| Proposed Rules: | | 663..... | 18658, 18903 |
| 100..... | 18668, 18670 | 672..... | 18519, 18526 |
| 34 CFR | | 675..... | 18519 |
| 251..... | 19334 | Proposed Rules: | |
| 757..... | 18840 | 611..... | 19510, 18683, 19199 |
| 758..... | 18840 | 675..... | 19199 |
| 36 CFR | | | |
| 13..... | 18491 | | |
| 37 CFR | | | |
| Proposed Rules: | | | |
| 1..... | 18671, 18907, 19286 | | |
| 2..... | 18907, 19286 | | |
| 38 CFR | | | |
| Proposed Rules: | | | |
| 8..... | 18550 | | |
| 40 CFR | | | |
| 52..... | 18494, 19169-19173 | | |
| 60..... | 18495, 18496 | | |
| 61..... | 18498 | | |
| 81..... | 18498 | | |
| 122..... | 18716 | | |
| 123..... | 18716 | | |
| 124..... | 18716 | | |
| 261..... | 18503, 18505 | | |
| 268..... | 18836 | | |
| 271..... | 19184 | | |
| 501..... | 18716 | | |
| Proposed Rules: | | | |
| 52..... | 18551, 18911 | | |
| 81..... | 18551 | | |
| 160..... | 18912 | | |
| 41 CFR | | | |
| 101-50..... | 18506 | | |
| 105-68..... | 18506 | | |
| 43 CFR | | | |
| Proposed Rules: | | | |
| 17..... | 18554 | | |

LIST OF PUBLIC LAWS

Last List April 25, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 45/Pub. L. 101-19

Designating May 1989 as "Older Americans Month." (May 1, 1989; 103 Stat. 47; 1 page) Price: \$1.00

S.J. Res. 92/Pub. L. 101-20

To invite the houses of worship of this Nation to celebrate the bicentennial of the inauguration of George Washington, the first President of the United States, by ringing bells at 12 noon on Sunday, April 30, 1989. (May 1, 1989; 103 Stat. 48; 1 page) Price: \$1.00

